ANALYSIS OF LEGAL TEXTS IN EFFECT IN THE NORTHERN PART OF CYPRUS WITH A VIEW TO FREEDOM OF ASSOCIATION

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The Civic Space is a Technical Assistance Project funded by the European Union (EU) under the Aid Programme for the Turkish Cypriot community.

The aims of Civic Space Project are;

• Increase and improve the capacities and actions of Turkish Cypriot civil society organisations (CSOs);

• Increase collaboration and improve joint actions between Greek Cypriot and Turkish Cypriot CSOs;

• Strengthen CSOs role and civic engagement in the Turkish Cypriot community;

• Foster cooperation, support and exchange of best practices between Turkish Cypriot CSOs and CSOs of the EU Member States as well as with EU-wide CSOs and CSOs networks.

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ABBREVIATIONS

ECtHR	: European Court of Human Rights
ECHR	: European Convention on Human Rights
ICESCR	: International Covenant on Economic, Social and Cultural Rights
UDHR	: Universal Declaration of Human Rights
ICCPR	: International Covenant on Civil and Political Rights
para.	: paragraph
p.	: page
CSI	: civil society institution
CSO	: civil society organization
etc.	: et cetera

INTRODUCTION

This report aims to lay out the effects of legislation in the northern part of Cyprus on the freedom of association, to determine existing legal obstacles, and make recommendations towards the removal of these obstacles. To this end, relevant international laws have been examined, taking into consideration Recommendation CM/Rec(2007)14 adopted in 2007 by the Committee of Ministers of the Council of Europe and its Explanatory Memorandum[1], the Guidelines on Freedom of Association prepared jointly by the Organization for Security and Co-operation in Europe (OSCE) and the Venice Commission[2], as well as the European Convention on Human Rights.

The right to freedom of association provides protection to many forms of association such as political parties, unions, associations and foundations. This report, however, includes only those that fit into the category of civil society organizations – and among these only associations and foundations. In sections of the report on associations, regulations listed within the new "Law on Associations", which came into effect on the 17th of May 2016, have been taken into account rather than the old "Turkish Community Council Law on Unions and Associations". Both fused (mazbut) foundations, which are fully administered by the Directorate General of Foundations in terms of management and all of their operations, and annexed (mülhak) foundations, which do not fit into the category of civil society organization, have not been examined within the scope of this report. Only those annexed foundations defined as contemporary foundations are part of the study reflected here[3].

The report is composed of four sections. The first section includes definitions of important terms related to associations and foundations in the legal texts applicable in the northern part of Cyprus. This is followed by a second section that analyses regulations in the "Constitution" in terms of the freedom of association. Relevant "laws" and "legal regulations" are scrutinized in light of international standards in the third section of the report, and the fourth section includes the conclusion and recommendations.

This report has been prepared by Gökçeçiçek Ayata, Expert Researcher at the Bilgi University Human Rights Law Research Center, within the scope of the Civic Space Project, which is a Technical Assistance Project financed by the European Union and implemented by a consortium led by B&S Europe. Fact checking of the report has been made by Senior Legal Expert, Öncel Polili.

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[1] Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe,and Explanatory Memorandum, Council of Europe Publishing, Strasbourg, 2008, http://www.coe.int/t/dghl/standardsetting/cdcj/CDCJ%20Recommendations/CMRec(2007)14E_Legal%20status%20of%20NGOs.pdf (date of access: 1 March 2016). This shall henceforth be briefly referred to as "Rec(2007)14 and Explanatory Memorandum".

[2] OSCE/OIDHR-Venice Commission Guidelines on Freedom of Association, OSCE's Office for Democratic Institutions and Human Rights (ODIHR), Poland, 2015, http://www.osce.org/odihr/132371?download=true (date of access: 1 March 2016). This shall henceforth be briefly referred to as "Guidelines".

[3] This issue is examined in detail in the section titled, "Freedom of Association and Civil Society Organizations".

I.
GLOSSARY OF TERMS

I. GLOSSARY OF TERMS

A. Terms related to Associations

Association: A legal entity formed by at least five real persons and/or legal entities by way of uniting their knowledge and work in order to reach a clearly defined and common goal or set of goals, other than seeking and sharing profit, or those banned by the "Constitution" or other laws. *("Law on Associations", article 2)*

Children's association: An association which may be founded by children over the age of 15 with written permission from their parents and/or guardians, focusing on areas that preserve and advance the best interests of children such as science, sports, arts, the environment and animal rights. Children over the age of 7 may become members with written permission from their parents and/or guardians. *("Law on Associations", article 2 and article 5)*

Police association: An association active on occupational matters such as wages, working conditions and personal rights, founded among members of the police forces themselves. Police associations may form no relationships whatsoever with other unions or associations. The term 'member of the police forces' signifies uniformed or non-uniformed civil servants within the Policing Organization, charged with the task of providing policing services, including traffic police who manage traffic-related issues, firefighters within the fire department, and civil service officers. Civil service officers are permanent, temporary or contracted civil servants or those in worker status appointed by the "Police Services Commission" to carry out duties within the Policing Organization that remain outside the realm of operational policing and firefighting, such as technical services, secretarial duties, calculation and registry work. *("Law on the Establishment, Duties and Authorities of the Policing Organization", article 2, article 16 and article 50)*

Sports association: An association which must receive approval from the "Ministry of Sports Affairs" in order to be able to be registered officially by the "district governor", and which must include a rule among its founding objectives stating that it shall occupy itself with at least one of the sports branches that exist under current sports federations. *("Physical Education and Sports Law", article 2 and article 19; "Law on Associations", temporary article 2)*

Sports club: A community formed by at least twenty people in order to organize sports events, build social relationships, engage in recreational or relaxing activities together, or for any legal purpose other than seeking profit. These must receive approval from the "Ministry of Sports Affairs" in order to be able to be registered officially by the "district governor". *("Physical Education and Sports Law", article 2 and article 19; "Law on Associations", temporary article 2)*

Consumer organization: A union, association or foundation established in order to protect consumer rights, with no relationship whatsoever to any commercial institution, and which does not engage in commercial activities. *("Consumer Protection Law", article 2)*

Foreigners' association: An association whose "... founders are foreigners with permanent residency in the Turkish Republic of Northern Cyprus and/or have completed 6 (six) years of uninterrupted residence and/or have work permits in the Turkish Republic of Northern Cyprus. More than half of the membership must be composed of such individuals." *("Law on Associations", article 2)*

Foreign association: An association "registered by a state other than the Turkish Republic of Northern Cyprus." "... these include supreme organizations whose headquarters are abroad." *("Law on Associations", article 2)*

Branch: A sub-unit without legal personality, established under an association for the implementation of its activities. *("Law on Associations", article 2)*

Representative Agency: A legal entity "established so that foreign associations may carry out their activities within the Turkish Republic of Northern Cyprus, with the permission of the Ministry [in Charge of Interior Affairs] upon receiving the opinion of the Ministry in Charge of Foreign Affairs". *("Law on Associations", article 2)*

Platform/Network/Initiative: An ensemble called an initiative, movement, etc. without any legal personality whatsoever, formed by associations among themselves, or with foundations, unions and other civil society organizations in order to reach a common goal or set of goals. *("Law on Associations", article 2)*

Sports federations: Federations that organize a variety of activities and events in their relevant sports branch, formed by sports associations and sports clubs. *("Physical Education and Sports Law", article 2)*

Supreme organization: A Federation with legal personality composed of associations, or confederations composed of such federations. Federations are formed when at least two associations with similar or common founding objectives come together, while confederations are formed by at least two federations with similar or common founding objectives. *("Law on Associations", article 2 and article 10)*

Foreigners' supreme organization: A supreme organizations with at least half of its membership composed of foreigners' associations. *("Law on Associations", article 2)*

B. Terms related to Foundations

Foundation: The permanent endowment of any property and possessions of a Muslim person, their use or the revenue these yield for devotion to charitable purposes. *("Law on Foundations", article 2)*

Foundation Deed: A written declaration of endowment that must be signed by the endower, who displays the intention to confine/allocate their goods through the act of endowment, in front of at least two witnesses, who have the capacity to enter into contract. If the endower is illiterate this must be signed in the presence of a notary (certifying officer), with two witnesses who have the capacity to enter into contract. *("Law on Foundations", article 2 and article 8)*

Bequeathed foundations: A declaration of endowment that shall come into effect after the proprietor is deceased. *("Law on Foundations", article 2)*

Beneficiaries (gallehar): A person or category of persons who are to benefit from the purposes and objectives of a foundation. *("Law on Foundations", article 2)*

Charitable purposes/charity work: Any purpose regarding the alleviation of poverty, development of education, advancement of religion or any other purpose beneficial to the Muslim Turkish society. *("Law on Foundations", article 2)*

Fused foundation: Foundations that are not annexed foundations, and whose ownership and administration belong fully to the Directorate of Foundations. These include all endowed or entrusted movable and immovable properties belonging to mosques, any other Islamic institution, shrines and Turkish cemeteries. *("Law on the Establishment, Duties and Operating Principles of the Organization of Foundations and Office of Religious Affairs", article 2).*

(Classical) Annexed foundation: "Foundations within this category are those managed by persons (Trustees), as determined by the conditions in foundation deeds, and their surplus revenue belongs to beneficiaries (gallehar) [the person or category of persons who are to benefit from the purposes and objectives of a foundation]."[4] These are thus managed by trustees appointed in line with the foundation deed, under the supervision of the Directorate of Foundations. *("Law on the Establishment, Duties and Operating Principles of the Organization of Foundations and Office of Religious Affairs", article 2)* These are foundations that were known or recognized as Annexed Endowments that could not be sold (Mülhak Meşruta) before the Law of Foundations came into effect, foundations whose trusteeship was handed to a certain person according to the foundation deed or its provisions, foundations administered by the society itself through representatives chosen by way of elections or appointment, and foundations established by groups of people engaged in a craft, job or occupation. *("Law on Foundations", article 2)*

(Contemporary) Annexed foundation: "(...) In addition to Annexed Foundations that may be defined as Classical Annexed Foundations, there have recently been Annexed Foundations established for various charitable purposes such as education, health, sports, arts and culture, which are governed by trustees or Boards of Trustees yet do not have beneficiaries."[5] These foundations are referred to in practice as (contemporary) annexed foundations.

[4] Ayer Barış, "Kıbrıs Vakıflarının Bugünkü Durumu ve Vakıflar İdaresinin Fonksiyonları" ("The Current State of Foundations in Cyprus and the Functions of the Directorate of Foundations"), Vakıf Haftası Dergisi (Foundation Week Magazine), 7 (1990): 201-218, p. 202, http://acikerisim.fsm.edu.tr:8080/xmlui/bitstream/handle/11352/853/Bar%C4%B1%C5%9F.pdf?sequence=1&isAllowed=y (date of access: 1 March 2016).
[5] Barış, p. 202.

II.
FREEDOM OF ASSOCIATION AND THE "CONSTITUTION"

II. FREEDOM OF ASSOCIATION AND THE "CONSTITUTION"

Freedom of association may be defined as the freedom of individuals to come together and form collective partnerships/organizations representing themselves to protect their interests.[6] As has been stated in the Guidelines on Freedom of Association, there is a very close relationship between democracy and the freedom of association. Indeed, the freedom of association is of vital importance both for the individual or collective exercise of other fundamental freedoms such as the freedom of expression and the freedom of assembly, and for a healthy, functioning democracy. A strong democracy is in direct correlation to the diversity of democratic organs such as political parties, civil society organizations (CSO), religious organizations, and unions. The key role freedom of association plays in terms of democracy is well known, and it is thus guaranteed in many international instruments.[7]

Principle regulations that guarantee the freedom of association are: the 20th article of the Universal Declaration of Human Rights (UDHR), the 22nd article of the International Covenant on Civil and Political Rights (ICCPR), the 8th article of the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the 11th article of the European Convention on Human Rights (ECHR). The northern part of Cyprus has duly signed and approved all three of these covenants that guarantee the freedom of association. Per the 90th article of the "Constitution", these covenants have thus become part of the legal framework in effect in the northern part of Cyprus. The primary standards that must therefore be taken into consideration during any legal reforms regarding the freedom of association must be those that exist within these covenants and conventions.

The 11th article of the ECHR "…[is based] on exercising freedom of expression in a pluralist democracy, [and] all ethnic, religious, cultural, social, occupational, sports-related or charity organizations, functioning independently from the state or government … to be established on this basis are considered 'organizations' that fall under the scope of article 11." [8] The report shall therefore mainly reference the 11th article of the ECHR, which is the fundamental regulation on this matter.

[6] David Harris, Michael O'Boyle, Colin Warbrick, Law of the European Convention on Human Rights, 2. ed., Oxford University Press, Oxford, 2009, p. 525.

[7] Guidelines, p. 14, para.1.

[8] Olgun Akbulut, "Toplantı ve Örgütlenme Özgürlükleri" ("Freedoms of Assembly and Association"), İnsan Hakları Avrupa Sözleşmesi ve Anayasa: Anayasa Mahkemesine Bireysel Başvuru Kapsamında Bir İnceleme (The European Convention on Human Rights and the Constitution: A Study on Individual Applications to the Constitutional Court), Sibel İnceoğlu (editor), Beta, İstanbul, 2013, p. 397.

The "Constitution"
Article 90/5

(5) "International treaties which have been duly put into operation shall have the force of law. There may be no recourse to the Supreme Court acting as the Constitutional Court in respect of such treaties on grounds of unconstitutionality."

The Universal Declaration of Human Rights
Article 20

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

The European Convention on Human Rights
Article 11 Freedom of assembly and association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

The International Covenant on Civil and Political Rights
Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

The International Covenant on Economic, Social and Cultural Rights
Article 8

1. The States Parties to the present Covenant undertake to ensure:
(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.
2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

The fundamental regulation regarding the freedom of association in the "Constitution" is the 33rd article titled "the Right to Form Associations". According to this article, citizens have the right to form associations without prior permission. The article also includes regulations stipulating that no citizen may be compelled to become or remain a member of any association.

The "Constitution"

The Right to Form Associations - Article 33

1. Every citizen has the right to from associations without prior permission. The manner and method of exercising this right shall be laid down by "law". The "law" may impose restrictions in the interests of national security, public order and public morals.

2. No citizen shall be compelled to become or remain a member of any association.

3. Associations may, where provided by "law", be closed down upon order by a judge; and in cases where any delay is considered objectionable from the point of view of safeguarding national security, public order or public morals, an association's functions may be suspended by order of an authority expressly empowered by "law", until a decision is made by a judge.

Freedom of Association is a right that may be limited. The 11th article of the "Constitution", which regulates the restriction of fundamental rights and liberties, mandates that fundamental rights and liberties may only be restricted by "law", without affecting their essence, for reasons such as public interest, public order, public morals, social justice, national security, public health and for ensuring the security of life and property of persons. The reasons for such restrictions listed in the 33rd article of the "Constitution", which regulates the right to form associations, are the protection of national security, public order and public morals. The 11th article of the "Constitution" is with regards to all fundamental rights and liberties guaranteed by the "Constitution", and as may be deduced from the expression "for reasons such as", the reasons for restriction are left quite open-ended. Even this has clearly not been considered satisfactory, since in almost all articles of the "Constitution" on rights and liberties reasons for restrictions have also been listed separately. Regulations of this sort give the administration immense, almost unlimited discretionary power in restricting fundamental rights and liberties, and the uncertainty and chaos this creates (in terms of which reason for restriction shall be applied to which case) allows for arbitrariness in practice. As the "Constitutional Court" is not consistent in its rulings on the matter, it is far from resolving the current state of uncertainty. In some of its rulings the "Constitutional Court" has based its judgment on the general reasons for restriction stated in the 11th article without considering the special reasons for restriction in specific articles, in others it has listed the special reasons for restriction stated in the article subject to the ruling, while in some it has cited both these special reasons for restrictions and the general ones all at once. [9]

According to the 11th article of the ECHR the exercise of the freedom of association may not be restricted in ways "… other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others." With respect to the ECHR system, interventions into the freedom of association must be prescribed by law, must be based on the limited number of legitimate purposes stated within the article (ECHR article 11), and must be necessary in a democratic society. If we are to examine the 33rd article of the "Constitution" alone, the picture we see is consistent with the ECHR. Yet due to the problem (regarding the 11th article of the

[9] "Anayasa Mahkemesi" ("Constitutional Court"), Ruling dated 6 November 1996 and numbered 4/1996 D. No: 8/1996; Ruling dated 26 November 1998 and numbered 4/1998 D. No: 5/1998; and Ruling dated 10 May 2001 and numbered 3/2001 D. No:2/2001.

"Constitution) we have stated above, it would be appropriate to restructure the regime of restrictions on fundamental rights and liberties with a liberal perspective and without allowing for arbitrariness, in a manner that meets international standards.

Another inconsistency between the 33rd article of the "Constitution" and the 11th article of the ECHR lies in the 3rd section of the 33rd article, which states that "Associations may, where provided by law, be closed down upon order by a judge; and in cases where any delay is considered objectionable from the point of view of safeguarding national security, public order or public morals, an association's functions may be suspended by order of an authority expressly empowered by law, until a decision is made by a judge." This regulation allows for the suspension of association activities without a judge's decision, and limits the implementation of this kind of suspension to "cases where any delay is considered objectionable". Yet it is unclear what a case where delay is considered objectionable really is, and who is to decide whether this is the kind of case at hand. Furthermore, no time limit has been determined in terms of receiving approval from a judge in interventions where the activities of associations are suspended. While this provision would still have been considered to allow for arbitrariness even if there were such a time limit, the fact that no time limit whatsoever has been codified in the "law" creates the possibility for even greater arbitrariness in interventions, thus posing a serious threat to the freedom of association. It is hence necessary that this regulation be removed.

Only citizens have been listed as those in possession of the right guaranteed by the 33rd article of the "Constitution". According to the 67th article, "All persons who acquired citizenship of the Republic of Cyprus under Annex D of the Treaty of Establishment of the 1960 Republic of Cyprus and were ordinarily resident in the Turkish Republic of Northern Cyprus on the l5th of November, 1983; and who acquired citizenship of the Turkish Federated State of Cyprus before the l5th of November, 1983; are considered citizens of the Turkish Republic of Northern Cyprus."

There is no unity in terms of the definition of 'a foreigner/alien' in the legislation of the northern part of Cyprus. According to the "Citizenship Law" (article 2) and "Permanent Residence Law" (article 2); "The term foreigner or alien signifies anyone who is not a citizen of the Turkish Republic of Northern Cyprus." The "Law on Foreigners and Immigration", on the other hand, includes another term alongside citizen: "Native of Cyprus" (article 2). Here, it is stated that "The term foreigner or alien signifies anyone who is not a citizen of the Turkish Republic of Northern Cyprus or a native of Cyprus". According to this "law", a person who was born in Cyprus or, as of 1974, in northern Cyprus, or whose father was born as such, and did not obtain citizenship in a foreign country even if they resided in one, or obtained British citizenship as per relevant laws, as well as the wife and child/step-child/adopted child under the age of 18 of this person are considered "natives of Cyprus".

Even though the 33rd article of the "Constitution" only lists citizens as those in possession of the right delineated in the text, the 10th article stipulates that "Every person has, by virtue of their existence as an individual, personal fundamental rights and liberties which cannot be usurped, transferred or renounced." While the 13th article on the "Status of Foreigners" states that rights and liberties guaranteed by the "Constitution" may be restricted in respect of foreigners, the restrictions must be exercised through "law", and in accordance with international law. The restriction in place on who possesses the right guaranteed by the 33rd article of the "Constitution" is therefore contrary to the ECHR.

The subject in possession of the freedom of association according to the 11th article of the ECHR is everyone, and it is of no significance whatsoever whether one is a citizen of a country or not, or even stateless. Those who are not citizens, including stateless persons, refugees and migrants, are entitled to the freedom of association, and it is unacceptable for them to be discriminated against merely because of their status. Although the 16th article of the ECHR allows for imposing restrictions on the political activity of Foreigners, this is only with regards to political activities and must be interpreted narrowly even when political activities are in question. [10]

The regulation in the 33rd article of the "Constitution" is also in violation of the ICCPR. According to the Human Rights Committee, which is the body that monitors the statelessness … the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and Foreigners. Foreigners receive the benefit of the general

[10] Guidelines, p. 52-53, para. 139-140.

requirement of non-discrimination in respect of the rights guaranteed in the Covenant, as provided for in article 2 thereof. This guarantee applies to Foreigners and citizens alike ... Foreigners receive the benefit of the right of peaceful assembly and of freedom of association ... There shall be no discrimination between Foreigners and citizens in the application of these rights."[11] The 33rd article of the "Constitution" is in violation of human rights standards in that it does not consider non-citizens possessors of the right it regulates. It must therefore be revised accordingly.

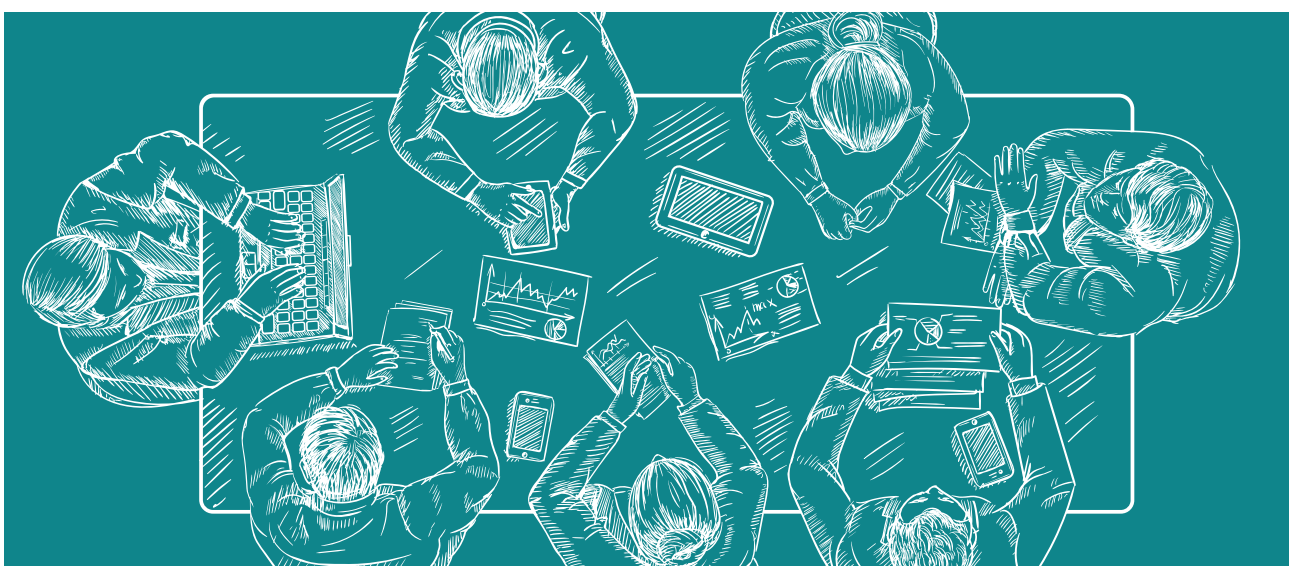
The 33rd article of the "Constitution" refers only to associations. The scope of the article must be expanded in order to explicitly include other forms of association such as foundations, platforms, networks, groups, initiatives, etc. in accordance with the freedom of association, in order to become compatible with the 11th article of the ECHR and relevant case law. In light of the perpetually developing and changing nature of human rights, it is probable that the scope of the freedom of association shall keep expanding as it has up until now. Hence, there is need for a regulation that expands the scope of this right within the "Constitution", instead of stating certain set types of organization. It shall hence be more suitable to use the inclusive term "organization" rather than listing different types of association one by one.

There is no restriction with regards to the objectives of association specified in the 33rd article of the "Constitution". Individuals may come together as per the freedom of association for a variety of purposes and objectives. The objective of association is not a factor that has any bearing upon freedom of association. The phrase "for the protection of his interests" in the 11th article of the ECHR clearly reveals this fact. It is possible for ethnic, religious, linguistic, cultural, social, political, occupational, sports-related or charity associations to be established. What is important here is that the association functions independently from the state.[12] In this respect, the "Constitution" is compatible with the ECHR.

It is clear that there is need for revision to articles of the "Constitution" regarding fundamental rights and liberties, especially those on the freedom of association. The articles in question must be reformulated in accordance with international standards, taking the negative and positive obligations of the state into consideration. It is an absolute necessity for CSOs themselves to be included in the discussion during this process of revision.

[11] Lema Uyar (compilation and translation), Birleşmiş Milletler'de İnsan Hakları Yorumları: İnsan Hakları Komitesi ve Ekonomik, Sosyal ve Kültürel Haklar Komitesi 1981-2006 (United Nations General Comments on Human Rights: Human Rights Committee and the Committee on Economic, Social and Cultural Rights 1981-2006), İstanbul Bilgi University Publications, İstanbul, 2006, p. 29-31, para. 1, 2 and 7.

[12] Akbulut, p. 397.



III.
FREEDOM OF ASSOCIATION AND CIVIL SOCIETY ORGANIZATIONS

III. FREEDOM OF ASSOCIATION AND CIVIL SOCIETY ORGANIZATIONS

In the Recommendation CM/Rec(2007)14 adopted in 2007 by the Committee of Ministers of the Council of Europe, CSOs are defined as volunteer and autonomous structures or organizations founded to achieve the not-for-profit objectives of their founders and members.[13] A similar definition may be found in the Guidelines on Freedom of Association; CSOs are not-for-profit, independent and organized bodies formed by the voluntary grouping of persons with a common interest, activity or purpose.[14] The points these two definitions have in common are the elements required for an organization to be considered a CSO. These elements are: coming together for common purposes/interests in a voluntary manner, being autonomous/independent, and not seeking profit.

The first element sought in a CSO is voluntariness. CSOs may be formed by the grouping of actual persons and/or legal entities or groups of these. What it means for membership to be on a voluntary basis is that one is free in joining a CSO or not, and that not wishing to join or refusing membership shall not give rise to any negative results. At the same time, it also means one is free to form organizations with others regarding issues that interest them, or join existing organizations of this sort, without the risk of facing negative consequences. In addition, persons must be free in terms of leaving the membership of an organization whenever they wish.[15] The second element is coming together for common purposes/interests. CSO founders and members are free in determining the scope of the objectives and purposes of their organization. They must be able to work without the unjust intervention of the state or third parties, in order to realize these objectives and purposes. These objectives and purposes, however, must be in accordance with the requirements of a democratic society.[16] The third element is autonomy. CSOs must be autonomous in order to take advantage of the freedom of association.[17] CSOs must not be subjected to the unjust interventions of the state or other outside actors; they must hence be independent. If decisions regarding the functioning of a CSO and its activities are being made by any person or institution other than its members or mechanisms determined by its members, that CSO is not independent.[18] The last element necessary here is that CSOs should not seek profit. CSOs may not share any profit they gain from their activities among their founders or members; they may only use this to finance their subsequent activities.

"The Turkish Community Council Law on Unions and Associations" remained for many long years the fundamental regulation regarding associations in the northern part of Cyprus, despite being far from international standards and including many legal gaps and uncertainties. A new "law" on the subject only came into effect in 2016, called the "Law on Associations". Other than these, there are a variety of regulations such as the "Physical Education and Sports Law", "the Law on Charities", "the Statute for Providing Aid to Arts Associations", "the Law of Lotteries", "the Law on Collecting Aid on the Streets and from Door to Door", "the Law on Legal Entities" (the Registry of Immovable Property), and the "Law on the Educational and Medical Activities of Missionaries" (Regulations regarding Foreigners). It is quite difficult to master all of this myriad of scattered and disjointed pieces of the legal framework.

It is possible in the northern part of Cyprus to establish a legal entity under the category of 'charitable institution' based on the "Law of Charities". According to the "law", the current trustees of any charity that has an educational, literary, scientific or public purpose may request the "Council of Ministers" to give them a registry certificate that bestows legal personality upon them. Those who apply for the legal personality of a charity are therefore the trustees of an existing organization. Issues such as why there is need for a separate type of legal entity (or personality) for charities, in what ways charities are different from other legal entities, how they shall operate, what kind of obligations they have, etc. have not, however, been clearly and explicitly regulated. Although the fact that different forms of association are recognized in legislation is positive in terms of the freedom of association, it does not seem possible for these vague regulations to be put into practice without allowing for ample arbitrariness.

[13] Rec(2007)14 and Explanatory Memorandum, p. 7, para. 1.
[14] Guidelines, p. 15, para. 7.
[15] Guidelines, p. 29-30, para. 44-46.
[16] Guidelines, p. 30, para. 47.
[17] Guidelines, p. 18, para 40.
[18] Guidelines, p. 28-29, para 41.

Legal framework regarding foundations in the northern part of Cyprus is just as ambiguous as that on associations and charities. What lies under this fact is that the management of foundations passed from the hands of the Ottoman Empire, to the joint administration of Ottomans and the British, and finally to the "Turkish Cypriot Administration", that foundation assets and properties were divided due to the Cyprus issue, and that different legal arrangements were made throughout this process and certain issues never found place in the "law".

The 131st article of the "Constitution" regulates the establishment of the Organization of Foundations (Vakf) and Office of Religious Affairs for the management of foundations. The Organization of Foundations and Office of Religious Affairs is a "Constitutional" institution with legal personality and a sustained existence, in possession of an official seal and vested with the capacity to acquire, retain and transfer property, make contracts, as well as sue and be sued in the name of its legal personality. It is composed of two sub-units called the Directorate of Foundations and the Office of Religious Affairs.

The "Constitution"
Organization of Foundations (Vakf) and Office of Religious Affairs - Article 131

(1) The institution of the Foundation (Vakf) and its Fundamental Rules (Ahkâmul Evkaf) are recognized by this "Constitution".

(2) All matters relating to or in any way affecting the institution of Vakf or any foundation properties, including properties belonging to mosques and any other Muslim institutions, shall be subject exclusively to the Fundamental Rules of Foundations (Ahkâmül Evkaf), to "legislation" in force and to "laws" to be enacted by the "Assembly of the Republic" after this "Constitution" has come into effect.

(3) Foundations (Vakfs), the income of which belongs to the Organization of Foundations (Evkaf Administration), shall be exempted from any form of taxation.

(4) The establishment and functioning of the Organization of Foundations and Office of Religious Affairs shall be regulated by "law" and these shall carry out the duties prescribed by "law".

(5) The State shall assist the Organization of Foundations in the execution of religious services·and in meeting the expenses of such services.

"... There are 452 foundations under the responsibility [of the Directorate of Foundations in Cyprus]. These are classified into two groups, as fused (mazbut) and annexed (mülhak), according to the Fundamental Rules of Foundations (Ahkamül Evkaf) handed down from the Ottoman regime to the laws of the Republic of Cyprus and the Turkish Republic of Northern Cyprus (TRNC). Foundations may come under the administration of the Directorate of Foundations due to reasons such as foundation property being left in the south as a result of the Cyprus issue, violations of the foundation deed (vakfiye), and the absence of trustees from the TRNC. After 15 years have passed from the moment an annexed foundation comes under the administration of the Directorate of Foundations, it becomes a fused foundation. Moreover, even though these are not defined and delineated by the legislation in effect, contemporary foundations have been permitted through interpretations of the legal text. These new foundations thus make up a third category, as contemporary annexed foundations." [19]

[19] Kıbrıs Vakıflar İdaresi Kurumsal Arkaplan Raporu I (Report I on the Institutional Background of the Directorate of Foundations in Cyprus), Türkiye Ekonomi Politikaları Araştırma Vakfı (Economic Policy Research Foundation of Turkey-TEPAV), 2014, http://www.evkaf.org/site/dokuman/KVİ%20-%20KURUMSAL%20ARKA%20PLAN%20RAPORU%20I%20-%20TEPAV%20(1).pdf (date of access: 1 March 2016), p. 16.

Table-1 [20]

	Contemporary Annexed		Classical Annexed		Fused	Total
	Managed by Trustees	Managed by Foundation Directorate	Managed by Trustees	Managed by Foundations Directorate		
In the "TRNC"	71	5	100	164	31	
In the ROC	-		39	78		
Total	71	5	139	242	31	452

The "Law on Foundations" is applied to all fused and annexed foundations, and all other foundations established after the "law" has come into effect. All operations of fused foundations, including their administration, are conducted by the Directorate of Foundations, and their income also belongs to the Directorate. Since the property and management of fused foundations is directly in the hands of the Directorate of Foundations, which is a Constitutional institution, it is not possible for these to be considered CSOs. These kinds of foundations have therefore not been included in the report. Annexed foundations are those which are managed by persons determined as per the conditions listed in the foundation deed (vakfiye), and their surplus revenue belongs to beneficiaries (gallehar) (a person or persons that are to benefit from the purpose of a foundation) designated in the foundation deed. These foundations are managed by trustees, yet this management is under the supervision of the Directorate of Foundations.

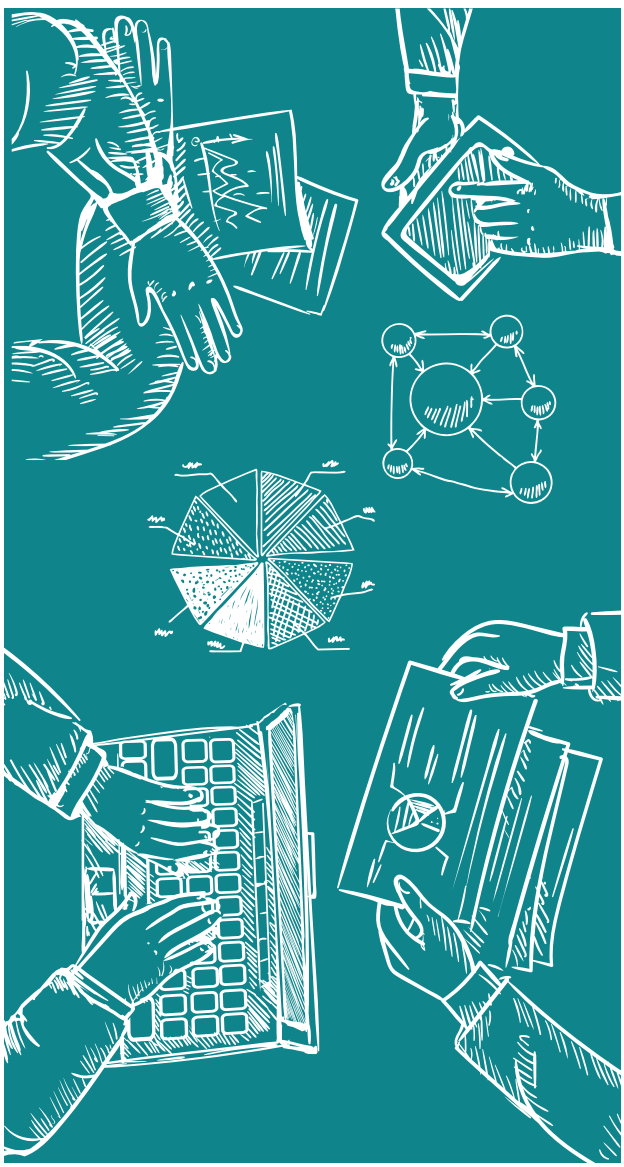
In the legal framework in the northern part of Cyprus the only differentiation that exists in terms of foundations is between fused and annexed ones. Annexed foundations, however, are also divided into two categories in practice as classical annexed foundations and contemporary annexed foundations. The reason for this differentiation between classic and contemporary is that contemporary foundations are, in fact, not annexed foundations in terms of their formation and purposes. Contemporary foundations are those which have been established for a variety of charitable purposes and are managed by boards of trustees yet do not have any beneficiaries. This distinction, however, has not been reflected in legal texts. Through flexible interpretation in practice, contemporary foundations are attempted to be made compatible with existing "legislation".[21]

The beneficiaries of classical annexed foundations today are mostly family members of the person who initially made the endowment, and these receive income in a form similar to donations. These foundations do not resemble the contemporary foundations we know, and they do not fit the category of CSO. Hence, only contemporary annexed foundations are included in this report. Yet, as mentioned above, there is no regulation regarding contemporary annexed foundations in existing legislation, and these appear to be under the same legal regime as fused and classical annexed foundations are. Since current legal regulations do not meet the needs of our day, contemporary annexed foundations are completely abandoned to the discretion of those who end up implementing the "law". This inadequacy and ambiguity of legislation regarding foundations poses a serious problem in terms of freedom of association. Legal regulations regarding foundations must therefore be revised from a wholistic perspective and in accordance with contemporary and international standards.

Legislation regulating the freedom of association must be formulated in a manner that expedites the establishment of new organizations and enables organizations to reach their objectives, while also preventing arbitrary practices by authorities in charge of implementing laws. Along with its obligation to avoid interventions that would violate the

[20] Kıbrıs Vakıflar İdaresi Kurumsal Arkaplan Raporu I (Report I on the Institutional Background of the Directorate of Foundations in Cyprus), p. 16.
[21] TEPAV report, p. 18.

freedom of association (a negative obligation), the state also must take the necessary administrative and legal measures to guarantee the freedom of association, and put these measures into practice (a positive obligation). As required by its positive obligations, the state must guarantee the proper functioning of organizations even when it finds their ideas disturbing. Legislation regarding the freedom of association must be formulated through an inclusive and participatory process. It must also be reviewed regularly, taking existing and upcoming needs into account, and be adapted to new situations. It must also be remembered that the freedom of association may be restricted in certain situations, and that such restrictions must be open to examination by a court or an independent and impartial organ.[22]



A. ESTABLISHMENT AND MEMBERSHIP

1. Establishment

a. Number of founders and amount of assets

Actual persons or legal entities – or groups formed by these – have the right to establish CSOs, regardless of whether they are citizens or not.[23] It is considered enough for two people to come together in order to found a membership-based CSO. It is possible for a higher number to be required in order to attain legal personality, yet the number to be determined should not be so high as to deter people from establishing a CSO.[24]

According to the "Law on Associations", however, at least five founding members are required for the establishment of an association. Actual persons or legal entities or groups formed by these (i.e. including both actual persons and legal entities) may come together to form an association. Even though the number of founding members required by "law" is not high, it is still not consistent with the Recommendation of the European Council. An amendment to the "Law on Associations" stating that two actual persons or legal entities or a group of these are enough for the establishment of an association shall facilitate the exercise of the freedom of association.

The "law" also defines federations as the grouping of at least two associations with similar or common founding objectives, and confederations as the grouping of at least two federations with similar or common founding objectives. The fact that two member organizations are considered sufficient by "law" is a positive approach in terms of enabling the exercise of the freedom of association.

[22] Guidelines, p. 18-19, para. 20-25.

[23] Rec(2007)14 and Explanatory Memorandum, p. 7, para. 2 and p. 22, para. 22.

[24] Rec(2007)14 and Explanatory Memorandum, p. 8, para 16-17.

Associations and supreme organizations may form platforms, networks and initiatives (called 'movement', 'initiative', etc.) among themselves or with foundations, unions and other CSOs, upon decisions by their authorized decision-making bodies, in order to reach a common goal, regarding subjects that have not explicitly been banned by "law", regardless of whether these are related to their founding objectives or not. These are groupings and collaborations that have no legal personality. Since the "law" includes no reference to a minimum number of founders required to form platforms, networks and initiatives, the existence of two organizations must be considered adequate for their formation. It is therefore also a positive approach in terms of the freedom of association for the "Law" to not require any more than two organizations for the formation of platforms, networks and initiatives, just like that of federations and confederations.

Matters regarding sports associations, sports clubs and sports federations are regulated both by the Temporary 2nd article of the "Law on Associations" and by the "Physical Education and Sports Law". Sports associations and clubs are established pursuant to the "Law on Associations". The "Physical Education and Sports Law" does not include a different minimum number of founding members required to establish a sports association. Hence, at least five founding members are necessary for a sports association just like any other association. Our recommendation to reduce the number required by the "law" of minimum founding members from five to two with regards to associations in general therefore also applies to sports associations.

The 19th article of the "Physical Education and Sports Law" stipulates that sports clubs shall also be established in accordance with the "Law on Associations". Taking only this article into account, it is possible to assume that the minimum number of founding members listed in the "Law on Associations" is adequate for the establishment of sports clubs as well, just like sports associations. In the 2nd article of the "Physical Education and Sports Law", however, sports clubs have been defined as communities formed by at least twenty people in order to organize sports events, build social relationships, engage in recreational or relaxing activities together, or for any legal purpose other than seeking profit. The minimum number of founding members required in practice is 20. Yet, as clearly demonstrated here, there is ambiguity regarding the number of founding members required when the 2nd and 19th articles of the "Physical Education and Sports Law" are considered in conjunction. It is first and foremost necessary to resolve this ambiguity. Furthermore, this regulation must be reevaluated in terms of its obstruction of the exercise of the freedom of association. In doing so, it shall be appropriate for the minimum number of founding members required for the establishment of sports clubs to be set as two, and if this cannot be done for it to at least be lowered to the amount considered adequate for other associations – as in, to five founding members.

Sports federations are federations that organize a variety of activities and events in their relevant sports branch, formed by sports associations and sports clubs. They are established in accordance with the "Physical Education and Sports Law". Federations carry legal personality and organize activities in one sports branch only. If there is already one sports federation in a certain sports branch, the establishment of another sports federation in the same branch or of any organization that would affect the form or function of the existing sports federation is not permitted. Sports federations organize and manage activities regarding their own sports branch according to international rules and regulations; they spread these activities across the northern part of Cyprus, developing and advancing their respective branch. They therefore represent the TC administration itself on their own sports branch locally and internationally.

The establishment of a new sports federation takes place with the publication of its Temporary Sports Federation Charter prepared by its General Board of Directors formed in accordance with the "Physical Education and Sports Law" in the "Official Gazette". The General Board of Directors serves under the "Ministry in Charge of Sports Affairs". It is composed of seven members in total, three of whom are chosen by the Sports Council, while the other three as well as the Chair are appointed by the "Minister". Preparing the founding charters of new sports federations to be established and presenting these for the approval of the "Council of Ministers" are among the duties of this Board. After it is established, a federation prepares its own charter that is to replace this temporary charter. This actual charter, prepared by the federation itself, containing procedures and principals with regards to the formation of its organs and its activities must then be approved by the "Council of Ministers".

Sports federations give membership to sports clubs and sports associations, which operate in their respective sports branches, are registered by the "Ministry", and possess the qualities required by federation charters. So long as they have at least five members, sports federations may gather their general assembly and determine their own authorized decision-making bodies themselves, thus attaining autonomy. If the number of active sports associations and sports clubs that are members of a sports federation falls below five, the federation loses its autonomy. Hence, a sports federation needs 25-100 people (either five sports associations – meaning at least 25 founders, or five sports clubs – meaning at least 100 founders) to be autonomous; if not, it is unable gain autonomy. In cases where autonomy cannot be attained or is lost, the "Ministry in Charge of Sports Affairs" gains a say in the management of the sports federation in question.

It is unclear why sports federations are treated differently than other federations when it comes to the minimum number of founding members required. Since more than one federation may not be established in the same sports branch, sports assocations and sports clubs founded to operate in their respective sports branches may only become members of a single federation. The establishment of a new sports federation is in the initiative of the "ministry". In addition to all of this, the fact that the autonomy of a federation depends on its having five active members makes it seriously difficult for sports federations to operate in an autonomous manner. For this to be ameliorated, the requirement of only two founding organizations in place for other federations according to the "Law on Associations" must be applied to sports federations (in the form of two sports associations or sports clubs) as well.

According to the "Law of Charities" the current trustees of any charity that has an educational, literary, scientific or public purpose may request the "Council of Ministers" to give them a registry certificate that bestows legal personality upon them. If the "Council of Ministers" sees fit to bestow this legal personality, it may provide the desired legal entity registry certificate, upon acceptance of the conditions it chooses to designate within the certificate itself regarding the qualifications and number of trustees, the duration of their term of office and their manner of resignation, as well as the procedure for appointing new trustees. Those who apply for the legal personality of a charity are the trustees of an existing organization. There are no restrictions in the "law" with regards to the number of trustees required for an organization to be eligible for application. It may only be requested that the number of trustees be included in the registry certificate. There are no restrictions regarding the number of founding members required for the establishment of a charity.

According to the "Law on Foundations", a foundation is "the permanent endowment of any property and possessions of a Muslim person, their use or the revenue these yield for devotion to charitable purposes." Annexed foundations may be formed through endowment by a competent person, for purposes stipulated by Law and of property that is fit to become a foundation. The 5th article of the "Law" titled "Persons competent to make an endowment" states that "Any Muslim person with the capacity to enter into contract may endow any property he or she may part with for the purpose of a foundation."

As may be seen, foundations are not membership-based CSOs. It is sufficient for assets fitting the criteria determined by the "law" to be allotted to a foundation. There are therefore no restrictions regarding the number of founding members required. There are also no restrictions in terms of the minimum amount of assets that must be allotted to a foundation for one to be established. As mentioned in previous sections, this report only includes contemporary annexed foundations. There are no legal restrictions regarding the minimum number of founding members or amount of assets required for contemporary annexed foundations just like any other foundation. In practice, however, it is expected that 10,000 USD be shown as founding assets for the establishment of a contemporary annexed foundation.

b. Eligibility for founders

In principle, everyone may be the founder of a CSO, yet it is possible that certain qualifications be sought in founding members of CSOs. One's past activities may end up creating obstacles when they wish to become a CSO's founder. For example, a person who has been declared bankrupt may be prevented from becoming the founding member of a CSO, or be asked to demonstrate their assets and prove they have enough capital. One may also be denied founding membership of a CSO if they have been previously convicted of a crime that renders them ineligible to become a CSO's founder. Yet the scope and time limit of such bans imposed must

be proportional. Imposing bans for an unlimited period and with an indefinite scope is in violation of this rule.[25]

International human rights instruments obligate States Parties to take special measures for persons to be able to benefit equally from all rights including the right to freedom of association regardless of their gender and sexual orientation, in addition to general obligations they include in terms of equality and preventing discrimination. Hence, states must not only guarantee every person's right to become the member and/or founder of an association regardless of their gender and sexual orientation, but also create an atmosphere that enables and facilitates different groups in exercising their freedom of association.[26] States must forbid CSOs from discriminating against their potential members due to their sex, sexual orientation or gender identity. Legal regulations to this end are considered legitimate restrictions on the right to freedom of association.[27]

According to the "Law on Associations", "5 (five) legal entities and/or actual persons who are citizens of the Turkish Republic of Northern Cyprus, have completed the age of 18 (eighteen) and have the capacity/ competence to take such action may form an association without prior permission or join the membership of existing associations." This regulation is consistent with international standards in that it allows actual persons, legal entities and groups formed by these to become founders of associations. The conditions regarding citizenship in the "Law" are examined in the section titled "Foreigners" below.

The "Law on Foundations" mandates that a foundation may be established through endowment by a competent person, for purposes stipulated by "Law" and of property that is fit to become a foundation. In the 5th article titled "Persons competent to make an endowment" it is stated that, "Any Muslim person with the capacity to enter into contract may endow any property he or she may part with for the purpose of a foundation". The fact that being of a certain religion is listed as a precondition in the "law" is against the freedom of association. This must be amended immediately. No regulation containing discrimination against a person or group due to their age, birth, color, sexual identity, state of health, being a migrant, state of residency, language, citizenship, ethnic or social origins, physical or mental disabilities, political or other opinions, possessions, race, religion or belief, sexual orientation or any other status may exist in legislation on the freedom of association. No person or group may be unjustly advantaged or disadvantaged over any other with regards to associating/forming organizations. Whether a CSO is membership-based or not may not be deemed a reason for discriminatory treatment.[28]

In the "Law of Charities" it is stated that the current trustees of any charity that has an educational, literary, scientific or public purpose may request a registry certificate that bestows legal personality upon them. The "law" contains great ambiguity with regards to everything other than the purposes an organization may have in order to be registered as a charity. Since the existence of ambiguous regulations within legislation carries the risk of causing arbitrariness, these regulations must be reviewed and revised.

i. Children

According to the 15th article of the Convention on the Rights of the Child, States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others." States must specially and explicitly recognize children's freedom of association.

The "Law on Associations" includes different regulations for children aged 7-15 and those above the age of 15. While children aged 7 to 15 may not be founders of associations, children over the age of 15 may only become founding members of children's associations. According to the "Law", children over the age of 15 may establish children's associations focusing on areas that preserve and advance the best interests of children such as science, sports, arts, the environment and animal rights, with written permission from their parents and/or guardians. Children's exercise of the freedom of

[25] Rec(2007)14 and Explanatory Memorandum, p. 10, para. 30 and p. 34, para. 69.

[26] Guidelines, p. 51, para. 132.

[27] Guidelines, p. 52, para. 138.

[28] Guidelines, p. 23, para. 30.

association is thus only possible with the written permission of their parents and/or guardians. This approach requiring permission from parents/guardians is not one that is accepted in international law.[29] There are "… [some States with legal regulations indicating] that there is an age below which children are not permitted to join associations or to do so without the agreement of their parents. The Convention provides no support for arbitrary limitations on the child's right to freedom of association." [30] This precondition of parent approval must be removed for children to truly enjoy and advance their freedom of association. Laying this kind of condition may easily give rise to arbitrary limitations of this freedom, and is also inconsistent with the Convention on the Rights of the Child.

ii. Foreigners

Actual persons or legal entities or mixed groups of actual persons and legal entities have the right to establish CSOs irrespective of whether they are citizens or not.[31] The subject in possession of the freedom of association according to the 11th article of the ECHR is everyone, and it is of no significance whatsoever whether one is a citizen of a country or not, or even stateless. Those who are not citizens, including stateless persons, refugees and migrants, are entitled to the freedom of association, and it is unacceptable for them to be discriminated against merely because of their status.[32]

Legal framework in the northern part of Cyprus, including the "Constitution" contains conspicuous exceptions and restrictions regarding foreigners in regulations on the freedom of association. According to the "Law on Associations" "actual foreign persons over the age of 18 (eighteen) and capable/competent to take such action, with permanent residency in the Turkish Republic of Northern Cyprus and/or have completed 6 (six) years of uninterrupted residence and/or have work permits in the Turkish Republic of Northern Cyprus may establish associations or join the membership of existing associations."

In its definition of "foreigner/alien" the "Law on Associations" references the "Law on Foreigners and Immigration". In this "law", it is stated that "The term foreigner or alien signifies anyone who is not a citizen of the Turkish Republic of Northern Cyprus or a native of Cyprus." According to this "law", a person who was born in Cyprus or, as of 1974, in the northern part of Cyprus, or whose father was born as such, and did not obtain citizenship in a foreign country even if they resided in one, or obtained British citizenship as per relevant laws, as well as the wife and child/step-child/adopted child under the age of 18 of this person are considered "natives of Cyprus". As may be seen, with this addition of "natives of Cyprus" to citizens, the definition of alien is narrowed down – albeit only partially.

There are a series of regulations on residence and work permits in the "law". Foreigners in the northern part of Cyprus are only allowed to establish foundations if they fulfill the conditions specified herein. This restriction of the exercise of the freedom of association with regards to foreigners is not compatible with international standards and must be removed from the "Law".[33]

There are no regulations regarding foreigners in terms of their being founding members of foundations within the "Law on Foundations". It is, however, stated that foundations may only be established through endowments by Muslim persons and for purposes consistent with the rules of Islam. Organizations with relations to a certain religion or faith may of course be founded, yet mandating that all foundations be established by persons from a single religious group for purposes consistent with that religion is a clear violation of the freedom of association. The fact that those referred to as contemporary foundations are able to exist in practice is fully based on "stretching laws" to meet the needs posed by our modern day conditions. This is a situation that at all times carries the risk of arbitrariness. It is necessary that this regulation therefore be repealed.

[29] Japan, CRC/C/15/Add.23126 February 2004, para. 29-30.

[30] Rachel Hodgkin and Peter Newell, Implementation Handbook for the Convention on the Rights of the Child, United Nations Children's Fund, 2002, p. 216.

[31] Rec(2007)14 and Explanatory Memorandum, p. 7, para. 2 and p. 8, para. 16.

[32] Guidelines, p. 52-53, para. 139-140.

[33] Regulations regarding "foreigners' associations", "foreign associations" and "foreigners' supreme organizations" within the "Law of Associations" are examined in the section titled "The Legal Personality of Foreign Civil Society Organizations".

iii. Civil Servants

The subject in possession of the freedom of association according to the 11th article of the ECHR is everyone. Yet in the text of the article it is stated that "This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State." This is the only restriction brought against the essence of the right. It should not, however, be assumed that this gives states a carte blanche in terms of restrictions. Certain civil servants, including those in the police and armed forces, may be limited in terms of their exercise of the freedom of association in certain ways. Restrictions of this sort may be deemed fair in cases where founding or joining the membership of a CSO is in conflict with public duties and/or endangers the political impartiality of civil servants. Along with this, however, the ECtHR makes it clear that such restrictions must be limited. Furthermore, all restrictions must be in line with the principle of proportionality. For example, a teacher may not be banned from joining a political party on grounds that he or she would encourage the ideology of that party in school, or members of the armed forces may not completely be banned from becoming union members. Although the ECtHR concedes that police officers' membership in political parties may be forbidden, it also states that they may engage in other political activities. Moreover, it must be remembered that a positive approach should be taken with respect to the unionization of civil servants, those in the police and armed forces, as well as their protection of their work-related rights. [34]

According to the "Armed Forces Internal Service Act" members of the armed forces are officers, petty officers, military officers, civilian personnel, salaried, contracted, and tax paying sergeants and soldiers, as well as military cadets. In the 12th article of the "Law", all members of the armed forces are banned from joining associations or coming into any contact with their activities, from taking part in assemblies and demonstrations no matter of what sort, and from making statements in speech or writing for such purposes, for the reason that the armed forces are and must remain outside and above the grasp of any political influence or thoughts. The "Public Security Officers Law" contains regulations regarding those who serve in the "Security Forces of the Turkish Federated State of Cyprus as permanent staff (active officers, petty officers, salaried sergeants and soldiers, military officers), contracted staff, temporary staff, workers, and those carrying out their obligatory national service". The 40th article of the "Law" stipulates that those covered within its scope may not establish associations. While there are no explicit regulations regarding the founding of associations in the "Armed Forces Internal Service Act", members of security forces have explicitly been banned from establishing associations according to the "Public Security Officers Law". Both legal texts include no regulations on foundations or charities. The blanket ban imposed by these regulations must be lifted.

According to the "Law on the Policing Organization (its Establishment, Duties and Authorities)" members of the police forces may found police associations among themselves on occupational matters such as wages, working conditions and personal rights. Police associations may form no relationships whatsoever with other associations. In the "law", the term 'member of the police forces' designates uniformed or non-uniformed civil servants within the Policing Organization, charged with the task of providing policing services, including traffic police who manage traffic-related issues, firefighters within the fire department, and civil service officers. Civil service officers are permanent, temporary or contracted civil servants or those in worker status appointed by the Police Services Commission to carry out duties within the Policing Organization that remain outside the realm of operational policing and firefighting, such as technical services, secretarial duties, calculation and registry work. There are no regulations regarding foundations and charities within the "law". Despite the fact that regulations regarding members of police forces are more flexible and provide greater freedom than those regarding members of the armed forces, members of police forces are also only permitted to establish police associations.

In this respect, "There is need for extensive amendment in legislation that almost abolishes [their] freedom of association. While certain restrictions can be stipulated for any specific profession in the context of freedom of association, such provisions entirely abolishing this freedom constitute a blatant violation of the freedom of association ... New legislation [to be made] should only impose restrictions that are specifically related to the duties of civil servants.

[34] Guidelines, p. 54-55, para. 144-146.

These restrictions should be as limited as possible and should involve no ambiguity." [35]

2. Association Charter/Statute and Foundation Deed

CSOs with legal personality must usually have a charter or statute. This statute must consist of the deed of establishment or state registration certificate of legal entity, and if possible a document that regulates under what conditions the CSO shall operate. CSOs, especially those that are legal entities, must respond to the needs of certain groups (members, founders, beneficiaries, funders, personnel and public authorities, etc.) with regards to their organizing and decision-making procedures. The easiest way for a CSO with legal personality to do this is by having a statute consistent with the laws where it has been founded, in which it explicitly states the conditions under which it shall operate. On the other hand, it is possible to achieve this goal in certain legal systems (for instance in Holland, with regards to informal/unofficial organizations) without an officially recognized charter or statute. It is usually expected for the statute of a CSO that is a legal entity to include the CSO's name, its objectives, its duties and authorities, the highest governing body, the frequency of meetings of this body, the procedure by which such meetings are to be convened, the way in which this body is to approve financial and other reports, the procedure for changing the statute of the CSO and for dissolving the organization or merging it with another CSO. These elements expected to take place in an association's statute are important matters regarding the conditions under which a CSO shall function. CSOs may also include additional elements regarding their establishment and membership in their statutes, but no obligations may be brought upon CSOs in this regard. The highest governing bodies of membership-based CSOs must be composed of their members, and this organ must be authorized in revising and amending the statute. Having the highest governing body composed of members is a manifestation of members' freedom of association. In CSOs that are not membership-based the highest governing body must be determined according to founding documents or statutes, irrespective of whether these have been prepared by founders while establishing the organization or have been changed later on.[36]

The "Law on Associations" mandates that every association must have a statute. An association statute must include the association's name and abbreviated name if applicable; the mailing address of its central office and contact information; its objectives; the names, surnames, residential addresses, occupations, identity numbers and signatures of founding members; conditions for membership, resigning and being expelled from membership; the procedures and principles of opening branches if such branches are to be established; procedures regarding the determination of membership fee amounts; the procedures by which and times when meetings of the general assembly are to be convened, its duties and authorities, its procedures for voting and decision-making as well as the procedure by which invitations to such general assembly meetings must be made; procedures for convening an extraordinary general assembly meeting including invitations, achieving quorum, and decision-making; the way in which the executive and auditing boards of the association are to be chosen as well as their duties and authorities, and numbers of full and substitute members; procedures and rules regarding the formation of the auditing board in the first general assembly meeting; procedures and rules regarding the form of documents to be used in collecting revenue for the association, their printing and approval; procedures and rules for dissolving the association and the liquidation of its assets in the case of such dissolution; as well as procedures and rules for changing the association statute. Almost each and every one of these elements required in association statutes are also required in the statutes of supreme organizations (federations and confederations). Every supreme organization must have a statute and this must include the obligatory elements listed in the "law".

While some of the obligatory elements statutes of associations and supreme organizations must include

[35] Gökçeçiçek Ayata and Ulaş Karan, Sivil Topluma Aktif Katılım: Uluslararası Standartlar, Ulusal Mevzuattaki Engeller, Öneriler (Active Participation in Civil Society: International Standards, Obstacles in National Legislation, Recommendations), TÜSEV (Third Sector Foundation of Turkey) Publications, May 2015, p. 46 (p.44-45 in the English version) http://insanhaklarimerkezi.bilgi.edu.tr/media/uploads/2015/12/16/MevzuatRapor_TUSEV.pdf (English version: http://www.tusev.org.tr/usrfiles/files/Active_Participation_in_Civil_Society.pdf)

[36] Rec(2007)14 and Explanatory Memorandum, p. 8-9, para 18-20 and p. 29-30, para. 48-51.

according to the "Law on Associations" appear consistent with the requisites mentioned above, the fact that statutes must be prepared in such great detail (there is no meaningful purpose in listing, for instance, the residential addresses and occupations of founding members in an association statute) complicates the exercise of the freedom of association. It shall be more appropriate to limit these as much as possible to elements that are absolutely required in a statute.

Associations and supreme organizations may form platforms, networks and initiatives among themselves or with foundations, unions and other CSOs, upon decisions by their authorized decision-making bodies, in order to reach a common goal, regarding subjects that have not explicitly been banned by "law", regardless of whether these are related to their founding objectives or not. These structures do not have legal personality, yet upon request the "Ministry in Charge of Interior Affairs" may provide a registry certificate in the name of the platform, network or initiative in question in order to be presented to national or international institutions. The "law" requires no founding document or statute for these organizations.

CSOs must have power over changes to their statutes in light of the principle of autonomy. CSOs must therefore not be obliged to take permission from public authorities in enacting changes to their statutes. It may, however, be requested that public authorities be notified of the changes made. Exceptions to this are changes to the names of CSOs and the objectives they list in their statutes. The requirement of official approval that may be put in place in these two exceptional circumstances must be executed in a manner similar to that during the establishment of CSOs, yet it should not be as if a new CSO is actually being founded. [37]

According to the "Law on Associations" procedures and rules for changing an association's statute must be delineated in the existing statute, just as procedures and rules for changing the statute of a supreme organization must be specified in its statute. The "law" does not put in place any requirement of approval prior to changes in the statutes of associations and supreme organizations. It has been deemed adequate for associations and supreme organizations to notify the "district governorate" of their district with regards to the changes they have made to their statutes within 15 days of enacting such change.

Foundations are property-based communities in possession of legal personality formed by way of allotment for charitable purposes of adequate property/goods, their use or income generated by these, without condition or time limit. Their establishment process is therefore different. Immovable property, movable property kept or used as subsidiaries of or equipment related to immovable property, or movable property that may not be consumed through use can be endowed for the establishment of a foundation. Yet if the person who is to make the endowment is not the owner of the property in question at the time of endowment, this property may not be endowed in the form of a foundation.

According to the "Law on (Savings, Registry and Appraisal of Value regarding) Immovable Property" the term immovable property refers to a land lot; buildings or any construction, structure or annex upon any such land lot, or in association with another building, construction or structure; trees, vineyards or anything of the sort that has been planted or sown in the land lot or has sprouted by itself, and their unpicked yield; any spring that is owned with or without relation to a land lot, well water and rights regarding this water; privileges, liberties, the right of easement or any other rights and benefits related to or assumed from any land lot or building, or any other construction or structure; as well as the undivided shares in these properties. The 36th article of the "law" titled "Endowing immovable property upon a foundation" stipulates that any immovable property registered in the name of a Muslim person, existing in areas designated for the purposes of this article upon a cadastral map signed by the "Director of Land Registry and Cadastre" and submitted to the district land registry office before the coming into effect of this legal text, may be vested in a foundation through a valid foundation deed. According to the article, immovable property outside areas designated in the "law" and registered in the name of a Muslim person, may also be vested in a foundation through a valid foundation deed if there are enough trees or vineyards or a building upon the land lot so as to satisfy the "Director of Land Registry and Cadastre". Yet a fee worth a fourth of the registered value of this kind of property must be deposited for as "revenue for the Turkish Cypriot administration" by the property owner; in the absence of the payment of this fee property of

[37] Rec(2007)14 and Explanatory Memorandum, p. 11-12, para. 43.

this sort may not be endowed. Any immovable property endowed upon a foundation after the coming into effect of the "Law on (Savings, Registry and Appraisal of Value regarding) Immovable Property" is registered in the name of a person with the right to become a trustee at the given time, in accordance with the foundation deed.

If the endowment is made by living persons, the declaration of endowment must be made in writing using words that clearly manifest the intention to make a dedication by way of foundation, and be registered and approved as foreseen by "law". This written declaration of endowment must be signed by the endower in the presence of at least two witnesses, who are capable of entering into contract. If the person making the endowment is illiterate, the declaration must be signed with two witnesses in the presence of an officer (notary) who shall verify the signature. Endowments may also be made by the deceased, by way of their last will and testament.

3. Membership

Everyone has the right to become the member of a membership-based CSO irrespective of whether they are an actual person or a legal entity, a citizen or not. The right to membership in a CSO is an integral part of the feedom of association. Legal regulations allowing for or causing unjust interventions and discrimination regarding membership to CSOs must not be part of legal framework. While membership is a right, nobody should be subjected to any legal or other kind of obligation to join a CSO, except for trade bodies that operate as CSOs and have been established by law. Membership conditions must primarily be determined by statutes prepared by CSOs themselves. Legal regulations must not only guarantee the right to membership, but also protect persons from being expelled from the membership of a CSO in a manner against the CSO's own statute. CSO members must not face any sanctions due to their membership in their respective organizations. It is possible for there to be restrictions with regards to certain occupational groups on this matter, yet these restrictions must be specified and implemented for only certain positions or occupations.[38] The 11th article of the ECHR also defines the subject in possession of the freedom of association as everyone, and it it is of no significance whatsoever whether one is a citizen of a country or not, or even stateless.

i. Children

According to the Convention on the Rights of the Child, States Parties must specially and explicitly recognize children's freedom of association. The "Law on Associations" includes regulations regarding children. The "law" allows for greater freedom in terms of children's membership in associations than in the conditions it sets for them to become founders. Here, there are different regulations for children aged 7-15 and those above the age of 15. Children above the age of seven and younger than 15 may only become members of children's associations and with the written permission of their parents and/or guardians. They may not, however, serve on the executive and auditing boards of the association. It is not permitted for those above the age of eighteen to join children's associations. When children who are members of these associations turn 18 their membership ends automatically. Children aged 7 to 15 may not be members of associations other than children's associations.

With respect to the 4th article of the "Law on Associations" children over the age of 15 may join associations formed by "5 (five) legal entities and/or actual persons who are citizens of the Turkish Republic of Northern Cyprus, have completed the age of 18 (eighteen) and have the capacity/competence to take such action" with the written permission of their parents and/or guardians. Yet they may not serve on the executive and auditing boards of the association. The article contains the following expression: "the children over the age of 15 (fifteen) of persons mentioned in this clause". What this means is that not all children aged 15, but only those who are the children of "citizens of the Turkish Republic of Northern Cyprus" may join associations. The "law" therefore not only differentiates based on citizenship when it comes to adults [39], but also with regards to children.

Children are only able to exercise their freedom of association through written permission by their parents or guardians. As mentioned above, in the section titled "Eligibility for founders" this approach foregrounding permission from parents/guardians is not one that is recognized by international law.[40]

[38] Rec(2007)14 and Explanatory Memorandum, p. 9, para. 21-24.

[39] The situation with regards to adults shall be examined below, in the section titled "Foreigners".

[40] Japan, CRC/C/15/Add.23126 February 2004, para. 29-30.

This requirement of permission must be removed for the advancement of children's freedom of association. This condition that has been put in place is of the sort that may bring about arbitrary limitations and is inconsistent with the Convention on the Rights of the Child. Moreover, the criterion regarding citizenship is also in breach of international standards. It is therefore best that this be revised and changed.

ii. Foreigners

The subject in possession of the freedom of association according to the 11th article of the ECHR is everyone, and it is of no significance whatsoever whether one is a citizen of a country or not, or even stateless. Those who are not citizens, including stateless persons, refugees and migrants, are entitled to the freedom of association, and it is unacceptable for them to be discriminated against merely because of their status. [41]

As mentioned in the section above, titled "Eligibility for Founders", exceptions and limitations regarding the freedom of association for foreigners are apparent in legislation in the northern part of Cyprus, including the "Constitution". In the "Law on Associations" it is stated that "actual foreign persons over the age of 18 (eighteen) and capable/competent to take such action, with permanent residency in the Turkish Republic of Northern Cyprus and/or have completed 6 (six) years of uninterrupted residence and/or have work permits in the Turkish Republic of Northern Cyprus may … join the membership of existing associations." The "Law on Associations" references the "Law on Foreigners and Immigration" in defining the term "foreigner/alien". In the "Law on Foreigners and Immigration" the term foreigner or alien is defined as "anyone who is not a citizen of the Turkish Republic of Northern Cyprus or a native of Cyprus". According to this "Law", a person who was born in Cyprus or, as of 1974, in northern Cyprus, or whose father was born as such, and did not obtain citizenship in a foreign country even if they resided in one, or obtained British citizenship as per relevant laws, as well as the wife and child/step-child/adopted child under the age of 18 of this person are considered "natives of Cyprus". As may be seen, with this addition of "natives of Cyprus" to citizens, the definition of alien is narrowed down – albeit only partially. There are a series of regulations on residence and work permits in the "law". Foreigners in the northern part of Cyprus are only allowed to join the membership of associations if they fulfill the conditions specified herein. This restriction of the exercise of the freedom of association with regards to foreigners must be removed from the "Law". [42]

iii. Civil Servants

The only exception with regards to the possession of the freedom of association in the 11th article of the ECHR is that lawful restrictions may be imposed on the exercise of these rights by members of the armed forces, of the police or of the administration of the State. Yet this exception does not, as mentioned in the section titled "Eligibility for founders" give states unlimited authority in imposing such restrictions. "While certain restrictions can be stipulated for any specific profession in the context of freedom of association, such provisions entirely abolishing this freedom constitute a blatant violation of the freedom of association." [43]

According to the "Armed Forces Internal Service Act" members of the armed forces are officers, petty officers, military officers, civilian personnel, salaried, contracted, and tax paying sergeants and soldiers, as well as military cadets. In the 12th article of the "Law", all members of the armed forces are banned from joining associations or coming into any contact with their activities. This restriction for members of the armed forces is not only with regards to associations, but also political parties, unions and professional organizations. There is only one exception to this restriction in the "Law": "Members of the Armed Forces may join the membership of associations and sports clubs with written permission from the Command of Armed Forces. They may not, however, work as active members in the associations they join without the added permission of the Command of Armed Forces."

The "law" has made both membership itself and working as an active member subject to two separate permission procedures. In this case, if members of the armed forces are unable to receive permission to be able to work as active members, their membership shall

[41] Guidelines, p. 52-53, para. 139-140.

[42] "Regulations in the "Law of Associations" regarding "foreigners' associations", "foreign associations" and "foreigners' supreme organizations" are examined in the section titled "The Legal Personality of Foreign Civil Society Organizations".

[43] Ayata and Karan, p. 50.

be on paper only, and all they shall be able to do is take advantage of services provided by their association or sports club – if indeed these do provide such services – to its members. Yet the freedom of association is closely related to the freedom of expression; it is, in fact, the collective exercise of the freedom of expression. Allowing a person to join an association yet requiring them to receive separate permission for active membership renders it difficult for them to operate alongside other members in line with the objectives and aims of their CSO. If this requirement for permission shall be retained, at least a single permission must be considered adequate, and amendments must be made to remove the added requirement for permission for active membership after permission has already been obtained to join the membership of an association.

The 40th article of the "Public Security Officers Law", which contains regulations regarding those who serve in the "Security Forces of the Turkish Federated State of Cyprus as permanent staff (active officers, petty officers, salaried sergeants and soldiers, military officers), contracted staff, temporary staff, workers, and those carrying out their obligatory national service," includes a similar prohibition. According to this article, those covered within the scope of this "law" may not join the membership of associations. They may only "… take part in activities that do not hinder the fulfillment of their duties or injure their professional reputation within permissible sports associations." The 38th article states that those who fall under the scope of this "law" may not join the membership of politically-motivated associations. It is unclear how expressions such as "politically-motivated association" or "activities that do not injure their professional reputation" shall be interpreted, or what these may come to mean through different interpretations. Restrictions imposed upon the right to freedom of association must rather be based upon clear and explicit criteria that may easily be monitored.

The "Law on the Establishment of Disciplinary Courts, Disciplinary Misconduct and Punishments, and Trial Procedure" contains disciplinary regulations regarding soldiers. According to the "law" the term "soldier" signifies "officers, petty officers, reserve officers, military cadets, those carrying out their obligatory national service, sergeant and soldiers who have gained their right to retire, contracted staff, the "Turkish Personnel of the Cyprus Army", officers and other employees with permanent or temporary status, and reserves as long as they remain in military service." In the "law", "Joining the active membership of associations and similar organizations or sports clubs that are not on the list approved by the Command of Armed Forces" is listed as disciplinary misconduct. This legal text includes the expression "active membership". This is indefinite in terms of scope, and open to interpretation and arbitrariness. Moreover, there is the fact that this list mentioned in the "law" is not open to the public. Due to this lack of transparency, it is impossible to know how the contents of this list have been determined or monitor it in any manner whatsoever.

If disciplinary misconduct is the case, the Disciplinary Court has the power to "Sentence the accused to a maximum of two months of room arrest or open arrest, with bail up to 1500 TL in order to preserve peace and tranquility and ensure good morals". If the case of disciplinary misconduct in question, punishable by the Disciplinary Court, is a "minor" one soldiers may also be punished by disciplinary authorities. Such disciplinary authorities have the power to impose the penalties of disciplinary warning, duty out of turn, forfeiture of leave and pay, open arrest and room arrest. It is possible to object against Disciplinary Court rulings and file a complaint against decisions by disciplinary authorities. It is unclear when misconduct is to be considered "minor" according to the "law". Taking into account that the Court has the capacity to impose more severe penalties, it is important to be able to differentiate when misconduct shall be handled by the Court and when by the disciplinary authority. Concrete regulations are necessary on this matter. Furthermore, according to the 79th article of the "law", "A person arrested and convicted from a misconduct that falls under the authority of the Disciplinary Court may not benefit from their wages and other personal rights for the period of their arrest." This regulation is deeply disproportionate and must be repealed immmediately.

The fundamental problem with regards to the three "laws" mentioned above is that they are in contradiction with each other even though they contain regulations regarding the same group of persons. While the "Armed Forces Internal Service Act" allows for membership in associations and sports clubs with written permission from the Command of Armed Forces, the "Public Security Officers Law" only allows membership in permissible sports associations, and the "Law on the Establishment of Disciplinary Courts, Disciplinary Misconduct and Punishments, and Trial Procedure" considers active membership in associations and similar organizations or sports clubs that are not on the list

approved by the Command of Armed Forces disciplinary misconduct. It is unclear whether members of the armed forces may join the membership of associations and sports clubs, only sports associations or associations, similar organizations and sports clubs. The expression "and similar organizations" within the "Law on the Establishment of Disciplinary Courts, Disciplinary Misconduct and Punishments, and Trial Procedure" increases the uncertainty in question, and makes the rules members of the armed forces must conform to even more ambiguous. It is necessary that the inconsistencies between these three "laws" be resolved.

According to the "Law on the Policing Organization (its Establishment, Duties and Authorities)" members of the police forces may found police associations among themselves on occupational matters such as wages, working conditions and personal rights. The "Law" defines members of the police forces as uniformed or non-uniformed civil servants within the Policing Organization, charged with the task of providing policing services, including traffic police who manage traffic-related issues, firefighters within the fire department, and civil service officers. Civil service officers are permanent, temporary or contracted civil servants or those in worker status appointed by the Police Services Commission to carry out duties within the Policing Organization that remain outside the realm of operational policing and firefighting, such as technical services, secretarial duties, calculation and registry work. According to the "law", members of police forces "… may not join the membership of any ensemble or association other than the Police Association. They may only become members of clubs, associations or ensembles with sportive, cultural or social purposes upon written permission by the Chief of Police." As may be seen, regulations regarding members of police forces allow for greater freedom that those regarding members of the armed forces.

The "Law on the Policing Organization (its Establishment, Duties and Authorities)" states that "The Policing Organization of the Turkish Republic of Northern Cyprus is established under the Prime Ministry, in order to carry out the duties and exercise the authorities prescribed by this "law" within the borders, territorial waters and airspace of the Turkish Republic of Northern Cyprus. This Organization answers to the Command of Armed Forces while fulfilling its duties and authorities resulting from this "law". It is subject to the Command of the Armed Forces in terms of its functioning, activities, management, observation, discipline and monitoring. With respect to these duties and authorities, the Command of the Armed Forces is responsible directly to the Prime Minister." The legal text also mandates the formation of the Disciplinary Commission of the Policing Organization to carry out disciplinary proceedings regarding members of the police forces. The "law" is implemented and executed by the Chief of Police, under the authority of the Command of the Armed Forces.

In the 115th article of the "law" that regulates disciplinary punishments given to members of the police force and the actions and behaviours necessitating such punishments, joining the membership of political parties, working for or against these kinds of parties or taking part in political actions, establishing unions or joining any existing union, organizing or taking part in, supporting or encouraging any assembly or demonstration are all listed among actions and behaviours that call for the penalties of dismissal from duty or demotion. Yet the article in question involves no provisions whatsoever with regards to CSOs such as associations, foundations, charities, etc. The article 115/A, regarding civilian service employees within the Policing Organization, establishing or registering into the membership of any union, becoming the chair or member of the board of directors of an association, participating in a demonstration, striking or encouraging and inciting such activities have been listed among actions and behaviours that must be punished by dismissal from public service. The penalty set by "law" of being dismissed from public service (any member of the police forces who is fired from duty is also considered dismissed from public service) due to actions such as establishing or joining the membership of a union, taking part in the administration of an association, etc. is very heavy and disproportionate. Even if these actions are considered to necessitate disciplinary punishment, proportional punishments must be determined. In the regulation stipulating that participating in the administration of associations is reason for dismissal from public service for civilian service employees, it has not even been taken into account whether the association in question is a police association or not. All associations have been included within the scope of this prohibition. It is completely incomprehensible and unacceptable for members of the police forces to to face dismissal from public service for taking part in the administration of police associations, which they have founded among themselves on occupational matters such as wages, working conditions and personal rights. Even if the regulation in concern is to be retained in the legislation, police associations must be taken out of its scope.

4. The Founding Objectives of Civil Society Organizations

Whatever procedures are recognized for the establishment of CSOs, the legality of their establishment, objectives and activities must be presumed.[44] The founders and members of a CSO must be free in determining the objectives and goals of that CSO. They must not be subjected to unjust interventions of the state or third parties in this regard. The objectives and goals of a CSO must, however, fit the requirements of a democratic society.[45] No restrictions have been brought against objectives and purposes in terms of the exercise of the freedom of association in international law. Perhaps the only boundary that has come up with regards to this is advocating for opinions considered hate speech.

The "Law on Associations" states that associations may be founded to reach a definite and common goal or set of goals other than the sharing of profit, and that have not been banned by "laws" or by the "Constitution". Hence, associations may be founded for any common purpose or objective whatsoever that has not been banned by "law", on condition that they do not seek to share profit. This limitation with regards to founding objectives appears reasonable. Yet, when there are laws that are in violation of international standards or ambiguous enough to allow for arbitrariness, it is unacceptable for the objectives of associations to be limited based on the criterion of "being banned by law" instead of amending or revoking the "laws" in question.

Legal texts impose certain restrictions regarding the objectives of children's associations, police associations, sports associations and consumer organizations. According to the 2nd and 5th articles of the "Law on Associations" children's associations may be established focusing on areas that preserve and advance the best interests of children such as science, sports, arts, the environment and animal rights. The "Law on the Policing Organization (its Establishment, Duties and Authorities)" stipulates that police associations may be founded among members of the police forces themselves on occupational matters such as wages, working conditions and personal rights. Sports associations are those which must include a rule among their founding objectives stating that they shall occupy themselves with at least one of the sports branches that exist under current sports federations, as required by the "Physical Education and Sports Law". Consumer organizations, on the other hand, are unions, associations or foundations established in order to protect consumer rights according to the "Consumer Protection Law".

Associations and supreme organizations may form platforms, networks and initiatives among themselves or with foundations, unions and other CSOs in order to reach a common goal, regarding subjects that have not explicitly been banned by "law", irrespective of whether these are related to their founding objectives or not. The situation with regards to federations and confederations, however, is different. Federations are formed by the grouping of associations with similar or common founding objectives, and confederations by the grouping of federations with similar or common founding objectives. As may be seen, it is not expected that the objectives of platforms, networks and initiatives be related to the founding objectives of CSOs that form them, or that CSOs that group in order to form these platforms, networks and initiatives have common or similar founding objectives themselves. For federations and confederations, however, founding CSOs are expected to have common or similar founding objectives.

According to the "Law on Associations" a foreign association or supreme organization wishing to open a representative agency in order operate in or collaborate with other organizations in the northern part of Cyprus must be founded with objectives related to sports, health, human rights, the environment and/or running educational activities for those with disabilities, and their planned operations or collaborations in northern Cyprus must be consistent with their founding objectives. Only foreign assocations and supreme organizations founded to operate in specific areas may therefore apply to establish representative agencies, and the activities or collaborations they shall undertake in the northern part of Cyprus must be in line with these founding objectives. It would be appropriate to make an amendment to the "law" revoking this restriction regarding founding objectives for foreign CSOs.

The legal framework in the northern part of Cyprus contains many restrictions regarding the objectives and purposes of foundations.

[44] Guidelines, p. 22, para. 26.

[45] Guidelines, p. 30, para. 47 and Rec(2007)14 and Explanatory Memorandum, p. 8, para. 11.

The "Law on Foundations" states that an endowment that is "illegal" or banned according to Islam, that is for a limited time period, that shall clearly fail as evident from the moment it is made, that is contingent upon a condition or the coming to pass of an event, that is for the care and restoration of any private grave other than the shrines of saints, or that is for an objective which has not been explicitly delineated may not be made for the establishment of a foundation. In addition to all of this, the objective of endowment must be related to charitable purposes. If a foundation aims to extinguish or delay the rights of persons/entities an endower is in debt to, or if the endower is incapable of paying his or her debts or is bankrupt at the time of endowment then this endowment upon a foundation is not deemed valid.

Making a declaration of endowment is considered concrete proof by the "law" of the existence of general intentions for dedication to charitable purposes. If a foundation that displays such general charitable intentions does not determine a specific mode of implementation or use, or determines one that has either become defunct or impossible to practice the property may be devoted by court order to other charitable purposes as close and similar to the original intentions of the endower as possible. A foundation deed is interpreted not word for word, but based on the general intentions of the person making the endowment.

In cases where some of the objectives intended for a foundation are not realized or cannot be realized, the validity of the rest of the objectives of the foundation does not suffer. This does, however, have certain exceptions. If part of the objectives for which the endowment for the foundation was made are those considered "illegal or banned" according to Islam (referred to as "illegal objectives" in the "law"), the legal objectives are executed while the property endowed for illegal objectives are returned to the endower or his/her personal representatives. While interpreting the provisions of a foundation deed, if it is seen that foundation beneficiaries (the person or category of persons who are to benefit from the purposes and objectives of a foundation) or objectives have not been specified, the gain from foundation property is handed over to the poor.

There are certain special conditions that must be fulfilled if the objective of an endowment is to construct a mosque. When a person constructs a building in order to endow as a mosque, or names the building they construct 'a mosque', they must separate this from the rest of their property, open a passage way for entry into this property, hand the property over to the village mosque commission and surrender ownership of and authority over this property to the commission. When the objective of a foundation is a mosque, the endower may not reserve any right of usufruct for him or herself; all attempts to this end shall be null and void. Provisions may be added to the declaration of endowment on expenses with regards to the usage of the mosque as a space of worship and its maintenance. Property may also be endowed through a foundation for the benefit of an already existing mosque.

As may be seen, there are a myriad of regulations regarding the objectives of foundations and prohibitions in terms of these. As dwelled upon in previous sections of this study, legislation regarding foundations in the northern part of Cyprus is far from being systematic and meeting the needs of our day. Regulations on foundations pose a serious obstacle in front of persons who wish to exercise their right to association through foundations. In terms of prohibitions in place regarding foundation objectives, the fact that endowments may not be made for objectives considered "illegal" or banned according to Islam is the most problematic aspect of the legal framework on foundations. This regulation is flawed due both to its being open to interpretation and to how it makes a single religion dominate all forms of foundations. Organizations with relations to a certain religion or faith may of course be founded, yet mandating that all foundations be established by persons from a single religious group for purposes consistent with that religion is a clear violation of the freedom of association. The fact that those referred to as contemporary foundations are able to exist in practice is fully based on "stretching laws" to meet the needs posed by the conditions of our day. Moreover, it is unclear who shall be in charge of interpreting whether the objectives of a foundation are among those forbidden by Islam, and how this interpretation shall be made. It is impossible for these kinds of regulations based on religion rather than "law" to establish standards that may be monitored and be consistent with international standards. This regulation must be repealed and the legislation on foundations must be amended so that it is compatible with international standards in terms of the freedom of association. This has already become more of an obligation than a simple need.

5. The Names of Civil Society Organizations

Prohibitions regarding names to be used by CSOs must be avoided unless they violate the rights of others, clearly create a misunderstanding that the CSO in question is an official institution or one with special legal status, or cause a CSO to be confused with another one.[46] Denying a CSO registry or attempting to shut down an existing CSO due to its name is a clear breach of the freedom of association.[47] This kind of intervention must be in line with an appropriate regime of restrictions.

The fundamental regulation regarding the names of CSOs is the "Law on the Restriction of the Use of Certain Names and Expressions". Other than this "law", there is a single provision in the "Law on Associations" on this matter. According to this provision, it is forbidden for associations to use the name, emblem, pin or similar symbol of a political party, union, supreme organization or association that has been dissolved or shut down by court order. It is clear that this prohibition aims to prevent any confusion with regards to the names of associations. It is reasonable that associations to be established not be allowed to use the same name, emblem, pin or similar symbols as existing political parties, unions, supreme organizations and associations. The ban regarding those that have been shut down by court order is probably based on the fact that the decision to shut down is usually issued due to criminal activities by these organizations, and that law-makers are thus reluctant to allow the resuscitation of their names. It is observed that the ban in question is not imposed with regards to the names, emblems, pins and similar symbols of CSOs that have expired of their own accord. If law-makers base this regulation on their positive approach towards or foresight that CSOs which have expired of their own accord might be revived, this might also be the case for CSOs which have been dissolved. Moreover, the regulation in question involves associations only, and it is unclear whether supreme organizations also fall within its scope or not. This regulation must therefore be revised in terms of dissolved CSOs and supreme organizations. It also does not seem appropriate for a blanket ban to be imposed with regards to those shut down by court order without considering the justifications of the court and the circumstances of the events upon which its decisions are based. It shall be best for the article to be reevaluated in this respect.

The "Law on the Restriction of the Use of Certain Names and Expressions" forbids the use of certain words. The names of organizations or enterprises registered before the coming into effect of this law, which have also become firmly ingrained through long term use are not subject to the rules set in this legal text. The permission of the "Council of Ministers" is required for the use of the words "Atatürk", "Bayraktar" (flag-bearer), "Sancaktar" (standard-bearer), "Mukavemet" (resistance), "Mukavemetçi" (resistance fighter), "Mücahit" (mujahid), "Mücahide" (female mujahid), or of expressions formed through combining or altering these words, or of new words and expressions to be brought under the scope of the "law" by the "Council of Ministers" in relation to these words.

It is forbidden for the "names or expressions" determined by the "law" to be used for any purpose or adopted as their name by any politically or socially motivated association, party, group, institution, club, community or any organization whatsoever, or taken as the name of any firm, group, institution organization with occupational, industrial, commercial or economic purposes or used for advertising without the permission of the "Council of Ministers". All names and expressions mentioned in the "law" other than "Atatürk", may only be used as a personal name or surname, and may not be exploited in any shape or form or used to make profit.

The restrictions brought by the "law" are not limited to those mentioned above. Giving the names of martrys or of any other persons who carry symbolic value for the nation to any place, street, way, building, institution, organization or vehicle as well as using the Crescent Moon and Star (the crescent and star upon the Turkish flag) and the Gray Wolf (the emblem of the Turkish Resistance Organization) as emblems in an identical or altered manner or in another shape are also actions that require permission by the "Council of Ministers". It is forbidden for the names, expressions, pictures or figures that are mentioned in the "law" to be used as tools for propaganda for any purpose whatsoever.

[46] Guidelines, p. 60, para. 159.

[47] Association of Citizens Radko & Paunkovski v. The Former Yugoslav Republic of Macedonia, Appl. No. 74651/01, 15.01.2009.

Clearly, the fact that the "law" designates only the "Council of Ministers" as the authority to give such permissions shall increase the level of bureaucracy. It shall also enable the arbitrary use of this power bestowed upon the "Council of Ministers". In other words, this shall make it possible for certain organizations to be allowed use of the names and expressions listed, while others are denied such use. In order to prevent arbitrary practice it is necessary to either completely ban the use of these names and expressions without recourse to permission or allow their use to everyone without need for permission.

While associations are explicitly mentioned in the "law", foundations are not. It may be assumed that the expression, "any association, party, group, institution, club, community or any organization" also covers foundations. If this procedure where permission is required prior to use shall be continued, its scope must be delineated with greater clarity. Regulations with uncertain boundaries create the risk of allowing for arbitrariness. Moreover, putting in place legal regulations of this sort, outside the fundamental regulations on associations and foundations – namely, the "Law on Associations" and the "Law on Foundations" – disrupts the systematic nature of legislation regarding the exercise of the freedom of association. The practice of making such regulations through separate laws must therefore be abandoned, the ones that exist must be removed, and hence these issues be contained within the fundamental law on the matter.

The "law" also includes penal sanctions. Those who act in violation of the "law" are considered to have committed a crime. They may be sentenced to pay a fine or up to six months in prison or both penalties at once. The court may also decide upon the payment of a fine for each and every day the crime continues to be committed. If these prohibitions are to be retained, more proportionate sanctions must be set and the clause involving prison sentence must be removed. It shall also be appropriate for CSOs to be warned regarding the matter prior to the imposition of sanctions, and for them to be given a chance to fix their mistake. Cases where the name chosen by a CSO is not compliant with the "law" and violations of this sort that may easily be righted should not be considered obstacles in front of the establishment of a CSO or reason for its dissolution. CSOs should be warned in an appropriate manner about the violation they are said to have committed and given the adequate chance to set things right.[48]

According to the "Law on the Flag of the Turkish Republic of Northern Cyprus" "Citizens of the Turkish Republic of Northern Cyprus as well as ensembles, associations, institutions and organizations with or without legal personality have the right to raise the flag of the Turkish Republic of Northern Cyprus or the Turkish Flag on their immovable properties and use either one of these without being subjected to any restriction whatsoever." These flags may not, however, be used as the main background for the emblems, flags and symbols of any political party, association, organization, foundation, club and community. Those who consciously and willingly do not abide by this prohibition are considered to have committed a crime. In the case of their conviction of said crime, they may be sentenced to up to six months in prison or a fine up to a hundred thousand Turkish Liras or both penalties at once. As mentioned above, putting in place legal regulations of this sort, outside the fundamental regulations on associations and foundations disrupts the systematic nature of legislation regarding the exercise of the freedom of association. It would be more correct for such regulations to be made part of the fundamental "laws".

B. LEGAL ENTITY

1. The Status of Legal Entity

CSOs are not required to have legal personality, yet they are expected to have an institutional form or structure.[49] Whether a CSO is a legal entity or not may have bearings on whether it may exercise its freedom of association or not. Yet no organization may be denied protection by this right for this reason only. Consistent meetings/groupings for particular purposes also fall within the scope of the freedom of association, even though they are not legal entities.[50] An organization

[48] Guidelines, p. 83, para. 253.

[49] Guidelines, p. 15, para. 7.

[50] Harris, O'Boyle, Warbrick, p. 526.

must not be forced to adopt a form of legal personality it does not wish for through the effective obstruction of its exercise of the freedom of association as it is, by way of overly difficult conditions set by the state.[51]

According to the "Law on Associations", associations and supreme organizations may form platforms, networks and initiatives among themselves or with foundations, unions and other CSOs, upon decisions by their authorized decision-making bodies, in order to reach a common goal, regarding subjects that have not explicitly been banned by "law", regardless of whether these are related to their founding objectives or not. These may operate on the national and international level. Platforms, networks and initiatives have no status as legal entity as separate from the CSOs that form them. Yet upon request the "Ministry in Charge of Interior Affairs" may provide a registry certificate in the name of the platform, network or initiative in question in order to be presented to national or international institutions. This regulation within the "law" is positive in that it allows for different forms of organizing, as well as recognizes and supports different kinds of CSOs that may be established without having to be registered officially; but it has shortcomings. The prospect of making an amendment to the "law" so that not only networks, platforms and initiatives are exempt from the requirement of permission, but that this requirement is also lifted with regards to all other CSOs must be taken into consideration. It shall be fitting for a sentence to be added to the "Law on Associations", specifying that the "law" contains regulations only on associations and supreme organizations that are officially registered. Another shortcoming here is that securities provided to supreme organizations due to their being legal entities are not afforded to platforms, networks or initiatives. This kind of revision to the "Law on Associations" would be a positive change.

In cases where gaining the status of legal entity is not an automatic result of the establishment of a CSO, a process of evaluation takes place regarding whether legal obligations have been fulfilled. Rules on the achievement of legal status must be objective and easily accessible, and these must not give public authorities in charge of implementing them ultimate discretionary power.[52] "The rules in question must not obstruct the exercise of the freedom of association and must incur the lowest possible costs. This would signify that legislation with regards to official registration would have to be elastic rather than bureaucratic."[53]

"It must be deemed adequate for a membership-based CSO to provide its statute, address, and the names of its founders, directors and legal representatives in the application it makes to attain status as a legal entity. For CSOs that are not membership-based, proof of sufficient financial resources to be able to carry out their founding objectives must be considered satisfactory."[54] The public institution in charge of registering CSOs must present in writing detailed justifications for any decision denying registry. The reasons for denial must not exceed the scope of existing regulations in the legislation on registry, and these regulations must in turn be compatible with international human rights standards. Denial of registry may only be based on non-conformity with procedures determined by international standards and legislation consistent with these standards, or on the existence of names and objectives deemed unacceptable by these standards as well as legislation consistent with them.[55]

The "Law on Associations" mandates that every association have a statute. An association statute must include the association's name and abbreviated name if applicable; the mailing address of its central office and contact information; its objectives; the names, surnames, residential addresses, occupations, identity numbers and signatures of founding members; conditions for membership, resigning and being expelled from membership; the procedures and principles of opening branches if such branches are to be established; procedures regarding the determination of membership fee amounts; the procedures by which and times when meetings of the general assembly are to be convened, its duties and authorities, its procedures for voting and decision-making as well as the procedure by which invitations to such general assembly meetings must be made; procedures for convening an extraordinary general assembly meeting including invitations, achieving quorum, and decision-making; the way in

[51] Zhechev v Bulgaria, Appl. No. 57045/00, 21.06.2007, para 56.

[52] Rec(2007)14 and Explanatory Memorandum, p. 10, para. 28-29 and p. 34, para. 67.

[53] Ayata and Karan, p. 42.

[54] Ayata ve Karan, p. 47.

[55] Guidelines, p. 60, para. 162.

which the executive and auditing boards of the association are to be chosen as well as their duties and authorities, and numbers of full and substitute members; procedures and rules regarding the formation of the auditing board in the first general assembly meeting; procedures and rules regarding the form of documents to be used in collecting revenue for the association, their printing and approval; procedures and rules for dissolving the association and the liquidation of its assets in the case of such dissolution; as well as procedures and rules for changing the association statute. The fact that elements considered obligatory in an association statute have been listed in such great detail renders the exercise of the freedom of association difficult.

Supreme organizations (federations and confederations) must also have a statute just like associations, and the statute of a supreme organization must contain many elements similar to that of an association. Therefore, the recommendation made above with regards to association statutes are also applicable to supreme organizations.

According to the "law" the notice of establishment and the statute of an association must be presented by its founding members to the "district governorate" in the district where the association's central office is located. The association statute is put through a maximum of a 60 days of examination by the "district governorate" from the moment it receives the statute in question, in order to determine points in violation and/or lacking with regards to the "Constitution" and the "Law on Associations". At the end of this at most 60-day long period, the "district governorate" informs the applicant either that the association has been officially enrolled in the associations' register or that their request to found an association has been denied, providing the necessary justifications in this case. If the "district governorate" does not answer the association's request within 60 days, the association is considered established and gains the status of legal entity. The "district governorate" is hence obligated to enroll the association in the associations' register by the end of this time period. If at the end of the 60-day examination period, any violation and/or deficiency is found with regards to the applicant association, the "district governorate" issues a written request to the applicant for their remedy. The corrected and completed statute is once again presented to the "district governorate" by the applicant. As soon as the "district governorate" decides, within at most 5 business days, that the violations and/or deficiencies in question have been remedied, the association is enrolled in the associations' register and it gains the status of legal entity. The upper limit of 60 days for the evaluation of the association statute is quite long, considering that the "district governorate" will only examine it for violations and/or deficiencies in terms of the "Constitution" and other "laws" – hence carrying out a procedural review more than anything. It shall be appropriate for a more reasonable time period to be set.

Supreme organizations gain status as legal entities differently from associations, in that they are only required to notify the "district governorate" of their district with regards to their establishment. The "law" does not specify a system with regards to keeping the record of supreme organizations. If such a register is to be kept, regulating this in the "law" shall prevent arbitrary practices.

The 19th article of the "Physical Education and Sports Law" stipulates that sports clubs and sports associations shall be established pursuant to the "Law on Associations". For an association to be considered a sports association or a club a sports club, there must be a rule among its founding objectives stating that it shall occupy itself with at least one of the sports branches that exist under current sports federations. In addition to this, after procedures are completed in accordance with the "Law on Associations", sports clubs and sports associations must also be approved and registered by the "Ministry in Charge of Sports Affairs". The same regulation also exists in the Temporary 2nd article of the "law". According to this article, a sports club or sports association must first apply to the "district governorate" of its district in order to be registered. The "district governorate" completes the registration procedure upon approval from the "Ministry in Charge of Sports Affairs". Sports associations and sports clubs may not gain status as legal entities without the approval of the "ministry". The Temporary 2nd article shall be annulled automatically after three years have been completed from the moment of the coming into effect of the "law". Yet, as long as the same regulation in the "Physical Education and Sports Law" remains in place, the requirement of "ministry" approval for sports associations and sports clubs shall still hold.

According to the "Physical Education and Sports Law" no sports club or sports associations that has not been approved by the "ministry" may become the member of any sports federation. Sports clubs and sports associations that are not members of any sports

federation yet wish to organize an activity must apply to the "ministry". Such sports clubs and sports associations may not organize events without approval from the "ministry" since they are not members of sports federations. This requirement of "ministry" approval, which renders it difficult for sports associations and sports clubs to gain legal personality, join the membership of sports federations and organize sports events, must be removed from both of the "laws" mentioned above. The "Physical Education and Sports Law" also stipulates that a one-time fee worth 20% of the monthly minimum wage shall be required for registry procedures, and that this fee shall be deposited to the "Sports Fund" controlled by the "ministry". It would also be appropriate for this regulation that obstructs the exercise of the freedom of association to be repealed.

Sports federations have been considered distinct from supreme organizations regulated by the "Law on Associations", and separate provisions have hence been put in place with regards to these in the "Physical Education and Sports Law". Sports federations established in accordance with the "Physical Education and Sports Law" have the status of legal entity and operate in terms of one sports branch only. The founding of a new sports federation takes place through the publication of the Temporary Sports Federation Charter prepared by its General Board of Directors formed in accordance with the "Physical Education and Sports Law" in the "Official Gazette". The General Board of Directors serves under the "Ministry in Charge of Sports Affairs". It is composed of seven members in total, three of whom are chosen by the Sports Council, while the other three as well as the Chair are appointed by the "ministry". Preparing the founding charters of new sports federations to be established and presenting these for the approval of the "Council of Ministers" are also among the duties of this Board. After it is established, a federation prepares its own charter that is to replace this temporary charter. This actual charter, prepared by the federation itself, containing procedures and principals with regards to the formation of its organs and its activities must then be approved by the "Council of Ministers". Sports federations give membership to sports clubs and sports associations, which operate in their respective sports branches, are registered by the "ministry", and possess the qualities required by federation charters. So long as they have at least five members, sports federations may gather their general assembly and determine their own authorized decision-making bodies themselves, thus attaining autonomy. If the number of active sports associations and sports clubs that are members of a sports federation falls below five, the federation loses its autonomy.[56]

For the establishment of a new sports federation the General Board of Directors serving under the authority of the "Ministry in Charge of Sports Affairs" must prepare a founding charter/temporary statute and submit this for the approval of the "Council of Ministers". After the federation is established it must prepare its own actual statute to replace the temporary one and once again request approval from the "Council of Ministers". Even if this whole procedure is complete, the federation may only be autonomous if it has five active sports associations or sports clubs in its membership. As may be seen, both the founding of a new sports federation and the autonomy of such a federation is subject to very tough requirements. These regulations in the "Physical Education and Sports Law" must be removed, and regulations regarding federations in the "Law on Associations" must be made applicable to sports federations as well.

Foundations are property-based communities in possession of legal personality formed by way of allotment for charitable purposes of adequate property/goods, their use or income generated by these, without condition or time limit. Immovable property, movable property kept or used as subsidiaries of or equipment related to immovable property, or movable property that may not be consumed through use can be endowed for the establishment of a foundation. Yet if the person who is to make the endowment is not the owner of the property in question at the time of endowment, this property may not be endowed in the form of a foundation.

According to the "Law on (Savings, Registry and Appraisal of Value regarding) Immovable Property" the term immovable property refers to a land lot; buildings or any construction, structure or annex upon any such land lot, or in association with another building, construction or structure; trees, vineyards or anything of the sort that has been planted or sown in the land lot or has sprouted by itself, and their unpicked yield; any spring that is owned with or without relation to a land lot, well water and rights regarding this water; privileges

[56] See the section titled "Number of founders and amount of assets" for criticisms and recommendations on this matter.

liberties, the right of easement or any other rights and benefits related to or assumed from any land lot or building, or any other construction or structure; as well as the undivided shares in these properties. The 36th article of the "law" titled "Endowing immovable property upon a foundation" stipulates that any immovable property registered in the name of a Muslim person, existing in areas designated for the purposes of this article upon a cadastral map signed by "the Director of Land Registry and Cadastre" and submitted to the district land registry office before the coming into effect of this "law", may be vested in a foundation through a valid foundation deed. Immovable property outside areas designated in the "law" and registered in the name of a Muslim person, may also be vested in a foundation through a valid foundation deed if there are enough trees or vineyards or a building upon the land lot so as to satisfy "the Director of Land Registry and Cadastre". Yet a fee worth a fourth of the registered value of this kind of property must be deposited as "State revenue" by the property owner; in the absence of the payment of this fee property of this sort may not be endowed. Any immovable property endowed upon a foundation after the coming into effect of the "Law on (Savings, Registry and Appraisal of Value regarding) Immovable Property" is registered in the name of a person with the right to become a trustee at the given time, in accordance with the foundation deed. The expression, "enough trees or vineyards upon the land lot so as to satisfy the Director of Land Registry and Cadastre" within the Law is quite susceptible to arbitrariness in interpretation, and must therefore be removed.

The "Law on Foundations" mandates that a foundation be established through endowment by a competent person, for purposes stipulated by "Law" and of property that is fit to become a foundation. In the 5th article of the "Law" titled "Persons competent to make an endowment" it is stated that, "Any Muslim person with the capacity to enter into contract may endow any property he or she may part with for the purpose of a foundation".[57] If the endowment is made by living persons, the declaration of endowment (foundation deed) must be made in writing using words that clearly manifest the intention to make a dedication by way of foundation. This written declaration of endowment must be signed by the endower in the presence of at least two witnesses, who are capable of entering into contract. If the person making the endowment is illiterate, the declaration must be signed with two witnesses in the presence of an officer (notary) who shall verify the signature.

The endower or their duly authorized representative submits the foundation deed to a Family Court judge who has territorial jurisdiction over the area where the endower resides or the property to be endowed as a foundation is located. The judge then notifies the Director of Land Registry and Cadastre and the Director of Foundations by sending them this deed of foundation. If a response detailing the existence of obstacles in front of the official registration of the foundation is not given by the Director of Land Registry and Cadastre or the Director of Foundations within ten days upon notification (or a longer time period allowed by the judge), the judge approves the deed of foundation for registry and notifies the Director of Land Registry and Cadastre, the Director of Foundations and the endower of its approval. If, after receiving the foundation deed, the Director of Land Registry and Cadastre or the Director of Foundations reaches the conclusion that obstacles exist, they inform the judge with regards to this situation. In the case that the judge receives such notification, he or she informs the endower or their duly authorized representative and, when applicable, any other persons of interest and invites them to provide reasons as to why the foundation deed must be approved for registry. The judge also notifies the Director of Foundations as well as the Director of Land Registry and Cadastre. Upon hearing all parties to the issue the judge makes a decision on the matter. If his or her decision is to approve the deed of foundation for registry, then he or she does so and informs the Director of Land Registry and Cadastre, the Director of Foundations and the endower of this registration. The Director of Foundations publishes an announcement of the official registration of the foundation in at least one Turkish newspaper, and includes both the name of the foundation and details regarding the property endowed in this announcement. Whether or not this announcement is made does not affect the validity of a foundation. From the moment a foundation deed is approved and registered as detailed above, the property in question no longer belongs to the endower, and the foundation becomes the subject of all intentions and objectives regarding this property.

[57] See the section titled "Eligibility for Founders" for criticisms and recommendations on this matter.

Endowments may also be made by the deceased, by way of their last will and testament. If the value of property endowed exceeds the value of the disposable portion of one's assets, the endowment made regarding property over this value is not considered valid unless inheritors give consent. If the beneficiaries of a foundation (the person or category of persons who are to benefit from the purposes and objectives of a foundation) are the heirs of the person who has made the will, no orders given by the owner of the will regarding the sharing of foundation revenues among heirs in a manner different from what is mandated by their legal right of inheritance may be considered valid, as long as heirs themselves do not consent to this. If these requirements are met, the last will and testament may be registered as a foundation deed by way of the procedure detailed above. Irrespective of whether the endowment is made by living or deceased persons, from the moment the foundation deed is officially registered, foundation property may not be given or transferred to others by the endower or by a trustee, neither can their heirs inherit this property that has been endowed upon a foundation.

The procedure determined for the registry of foundations is quite laborious. Not only is there a permission requirement in place for the registry of a foundation instead of simply notification, but this registry has also been made subject to a judge's decision. To complicate things further there is the added fact that the judge must communicate with, notify or request information from the Director of Land Registry and Cadastre and the Director of Foundations at all times, and when necessary the endower or their duly authorized representative and – if present – all other persons of interest. Although it is more secure for the decision to approve a foundation for registry to belong to a judge rather than any public office, it is clear that simplifying the procedure for the registry of a foundation would reduce the amount of obstacles in front of the establishment of contemporary annexed foundations (which are those handled in this report), and that more foundations in line with the conceptual framework of our day would therefore be able to come into existence.

According to the "Law of Charities" the current trustees of any charity that has an educational, literary, scientific or public purpose may request the "Council of Ministers" to give them a registry certificate that bestows legal personality upon them. If the "Council of Ministers" sees fit to bestow this legal personality, it may provide the desired legal entity registry certificate, upon acceptance of the conditions it chooses to designate within the certificate itself regarding the qualifications and number of trustees, the duration of their term of office and their manner of resignation, as well as the procedure for appointing new trustees.

The voluntariness that governs the establishment of CSOs is also the main tenet in terminating the legal personality of CSOs that have become legal entities. Its members must be the ones who decide to terminate the legal personality of a CSO. In CSOs that are not membership-based, the board of directors has the authority to decide upon the termination of its legal personality in the case of bankruptcy, the state of long-term dormancy or malpractice.[58] "The dissolution [of a CSO] may only be considered legitimate if it poses a clear threat to democracy, denies democratic principles, encourages the use of violence or uses violent means itself.[59] Furthermore, a CSO must not be shut down on grounds that its statute is against existing legislation, unless this statute includes expressions that encourage or incite hate speech or violence.[60] Forceful closures of CSOs must be used as a last resort, and the existence of this kind of threat must be concretely proven. Legal regulations regarding sanctions must be explicit and contain no ambiguity whatsoever."[61]

The 33rd article of the "Constitution" regulating the right to form associations states that "Associations may, where provided by law, be closed down upon order by a judge; and in cases where any delay is considered objectionable from the point of view of safeguarding national security, public order or public morals, an association's functions may be suspended by order of an authority expressly empowered by law, until a decision is made by a judge." In the "Law on Associations" this issue is addressed in the 27th article, stipulating that "The ministry [in charge of Interior Affairs]" or "district governorate" may request the opening of a lawsuit against an association or supreme organization

[58] Rec(2007)14 and Explanatory Memorandum, p. 12, para 44.

[59] Tourkiki Enosi Xhantis and Others v. Greece, Appl. No. 26698/05, 27.03.2008.

[60] IPSD et Autres c. Turquie, Rec. No. 35832/97, 25.10.2005.

[61] Ayata ve Karan, p. 66

in the name of protecting national security or public safety, ensuring public order and preventing the commitment of a crime, as well as preserving the rights and liberties of others. The Court may eventually rule to shut down the association or supreme organization in question. For the duration of the court case, the Court may also choose to take all kinds of precautionary measures it sees necessary, including the suspension of the activities of the association or supreme organization on trial." As mentioned in the section titled "Freedom of Association and the Constitution" within this report, this regulation in the 33rd article of the "Constitution" allows for the suspension of association activities without a judge's decision, and limits the implementation of this kind of suspension to "cases where any delay is considered objectionable". Yet it is unclear what a case where delay is considered objectionable really is, and who is to decide whether this is the kind of case at hand or not. Furthermore, no time limit has been determined in terms of receiving approval from a judge in interventions where the activities of associations are suspended. In its current form this regulation enables arbitrary interventions into the exercise of the freedom of association, thus posing a serious threat against it. It must thus be removed from legislation. Furthermore, the expression "safeguarding public morals", which exists both in the "Constitution" and in the "Law on Associations", affords serious discretionary power to judiciary organs. The relativity inherent in the concept of 'morality' allows for arbitrary limitations of the freedom of association. It shall thus be appropriate for this expression to be removed from the "laws" in question.

According to the "Law on Associations", decisions for the dissolution of associations and supreme organizations may be made by their general assemblies. Such a decision to dissolve an association or supreme organization taken by the general assembly is then published in a local newspaper in the northern part of Cyprus to inform the general public. Within 15 days of this decision of dissolution by the general assembly a financial report demonstrating the association's financial state must be submitted to the "district governorate". After the liquidation of association assets as per the decision of the general assembly is complete, the association is removed from the associations' register. The procedure to be followed in the dissolution of associations and supreme organizations, as well as what constitutes quorum for meeting and for decision-making are regulated in their statutes. An association against which a lawsuit has been brought may not dissolve itself through the decision of its general assembly until the court case is resolved. If the Court rules to shut the association down it is considered dissolved.

Associations and supreme organizations expire of their own accord if the first general assembly meeting has not been held within the time period foreseen by "law" and its mandatory bodies have thus not been formed, if the formation of its executive board as required by its statute has become impossible, and if the regular meeting of the general assembly cannot be held within 6 months of the initial call put out for it. An additional reason for such automatic termination of a supreme organization is if the number of its members falls below two and this cannot be remedied within 3 months. Associations are under the obligation to hold their first general assembly meeting and form their various mandatory bodies within 6 months following the written notification of their registry upon having completed the necessary procedures for establishment. The "law" specifies no time limit for the first general assembly meeting of supreme organizations.

According to the temporary 1st article of the "Law on Associations", associations founded under names such as association, union, society, etc. and have gained legal personality before the coming into effect of this "law", must amend their statutes so that these are compatible with the "law" within 1 year after the "law" has come into effect. Associations that fail to do this may not form federations or join existing ones, and the rules regarding automatic termination listed in the "law" are applied to them.

Two thirds of the members of an associations's executive board or the "district governor" of the district may request an evaluation from an authorized district court to attest that it has, in fact, expired automatically. In this case, the same rules as those when an association is dissolved by the decision of its general assembly are applied. That is, the fact that the association has expired of its own accord must be published in a local newspaper in the northern part of Cyprus, and a financial report demonstrating the association's financial state must be submitted to the "district governorate".

The liquidation of the funds, properties and rights of an association that is dissolved upon the decision of its general assembly or that expires automatically is carried out according to principles stated in its statute. If an association or supreme organization has been shut down by court order, all of its funds, properties and rights are transferred to a budget item seen fit by the "Ministry in

Charge of Financial Affairs", by court order on condition that third persons retain the right of recourse. The executive board is responsible for the veracity of the information provided in the financial report. For all damages or losses third persons may incur due to false statements and/or the dissolution of the assocation, they may have recourse to members of the executive board. An association in whose name a lawsuit for dissolution has been filed may not make any transfers regarding relevant budget items, if it has decided to dissolve itself and transfer its properties, until the court case is over. After liquidation and transfer processes of associations, which have been dissolved or have expired automatically, are complete their record is erased from the associations' register.

In some of the regulations regarding the dissolution, termination and liquidation of associations and supreme organizations there is only mention of associations. For instance, the 24th article, which regulates the dissolution and termination of both associations and supreme organizations, there is a provision that states that "within 15 (fifteen) days of a decision for dissolution given by the general assembly, an association must submit a financial report demonstrating its financial state" to the "district governorate". According to this regulation, supreme organizations may not be expected to submit financial reports following decisions for their dissolution since they are under no such obligation. If "law-makers" aim for these regulations to apply to supreme organizations as well, then the term 'supreme organizations' must explicitly be included in the relevant sections of the "law". Provisions that aim to apply different rules to associations and supreme organizations must be stated in an explicit manner, so as not to require any interpretation. Otherwise it is not possible for these regulations to be implemented with regards to supreme organizations. Other sections of the "law" contain similarly ambiguous regulations. The entirety of the "law" must be revised taking this issue into account, and necessary amendments must be made in order to prevent the arbitratriness and errors that may result from this ambiguity in practice.

A foundation deed approved and registered in accordance with the rules listed in the "Law on Foundations" may not be withdrawn, and the endower does not have the authority to dissolve a foundation of this kind. Only if the endower has kept such a right reserved, may he or she modify the registry status and conditions of a foundation deed or may any changes at all be enacted upon said registry status and conditions. These changes or modifications are subject to approval as per the rules stated in the "law".

In the case that a foundation, which displays general charitable intentions, does not determine a specific mode of implementation or use, or determines one that has either become defunct or impossible to practice, the property may be devoted by court order to other charitable purposes as close and similar to the original intentions of the endower as possible. Making a declaration of endowment (foundation deed) is considered proof of the existence of general intentions for dedication to charitable purposes.

2. Establishing Branches

CSOs must not be required to obtain added permission to establish branches within the country or abroad.[62] The establishment of branches is a matter concerning the internal organization of a CSO, and is thus only subject to requirements set by its statute. The only circumstance under which official permission may be required is if a branch aims to attain legal personality separate from the CSO it is part of. In this case, the same conditions required for CSOs to be able to gain status as legal entities may be sought in branches.[63] CSOs must not be required to obtain official permission to establish a branch that shall not have separate legal personality.[64]

In the northern part of Cyprus associations and supreme organizations (federations and confederations) are allowed to establish branches as per the "Law on Associations". According to the "law", a branch signifies a sub-unit without legal personality, established under an association for the implementation of its activities. Branches do not have separate legal personality, and as such they are subject to the association or supreme organization they have been established under.

For an association or supreme organization to be able to establish branches it is necessary for this to have been specified in their statutes. Associations must include the procedures and principles regarding the establishment of branches in their statutes.

[62] Rec(2007)14 and Explanatory Memorandum, p. 11, para 42.

[63] Rec(2007)14 and Explanatory Memorandum, p. 38, para. 86

[64] Guidelines, p. 63, para. 175.

If they are to establish branches, supreme organizations too must provide provisions within their statutes on how these branches are to be established and opened, what their duties and authorities shall be, and how they shall be represented in the general assembly of the supreme organization. It is also possible for associations and supreme organizations to open branches abroad.

Associations and supreme organizations are not under the obligation to include provisions on the closure of branches within their statutes. This allows for a degree of freedom to CSOs, and enables an association or supreme organization to make its own decision as to whether it shall close a branch or not.

During the opening of a branch, a notification of branch establishment signed by at least three individuals to be authorized by the executive board of an association must be submitted to the "district governorate" of the district where the branch shall be opened. This obligation creates the necessity of the existence of at least three association members in the place where the branch shall be located. It would appropriate for the number of persons required for the establishment of a branch to be lowered to one.

According to the "Law on Associations", the notification of branch establishment is examined by the "district governor" or a district inspector assigned to this duty by the "district governor" within 30 days of its submission to the "district governorate". If, as a result of this examination a violation and/or deficiency with regards to the "law" and/or the association statute is found, the applicants are requested in writing to remedy the violation or deficiency in question within 30 days. Associations that do not remedy these violations and/or deficiencies within the time period they are required to upon notification may not establish branches. It is not at all clear what exactly the expression "notification of branch establishment" used in the "law" signifies. Taking into account the fact that an association's statute is examined by the "district governorate" of the district where the central office of the association is located while the association itself is being established, it is not possible to comprehend what kind of elements the notification of branch establishment includes so as to necessitate yet another check for consistency with the "law". What is meant by this notification of branch establishment must be described explicitly. In order not to complicate the establishment of branches and render the article compatible with international standards, nothing must be required in this notification other than a reference to the relevant article within the association statute and the signatures of authorized persons. It must be stated in the "law" that the examination of the notification of branch establishment is merely procedural. It must therefore be acknowledged that this examination is limited to checking for the existence of a provision in the association statute with regards to establishing branches and for the signatures of persons authorized by the executive board as mentioned in the "law". Ambiguity in terms of the notification of branch establishment and the examination to be conducted leaves the procedure for the establishment of branches completely to the discretion of the administration. Hence, this procedure is in need of concretization.

The 30-day period allowed to the administration for the examination of violations and/or deficiencies in the notification of branch establishment is quite long, taking into account the matters mentioned above. This time frame must thus be revised and shortened.

Although the "law" stipulates that supreme organizations may establish branches, the 9th article titled "Branches" refers only to associations. According to the "law", supreme organizations gain legal personality by way of submitting their notification of establishment to the "district governorate" of their district. They are not subject to examination the way associations are. It may therefore be assumed that it is adequate for supreme organizations to merely notify the administration while establishing branches, and that these will also not be subject to examination. Yet the gap in the "law" may give rise to arbitrary practice. An explicit statement that the 9th article of the "law" with regards to branches is not applicable to supreme organizations is therefore necessary. If the article is to apply to supreme organizations as well, the suggestions for amendment made with regards to the 9th article above must also be considered in terms of supreme organizations.

There are no regulations about the establishment of branches for foundations in the "Law on Foundations". This gap in legislation creates serious obstacles in front of foundations in terms of establishing branches. This is an important issue for those referred to as "contemporary foundations" especially. The legislation in effect in the northern part of Cyprus with regards to foundations must be revised and reformulated in a manner consistent with the circumstances of our day

and international standards on the freedom of association.

3. The Legal Personality of Foreign Civil Society Organizations

The exercise of the freedom of association must not be dependant on being a citizen or not. While all actual persons and legal entities as well as groups formed by these have the right to become founders of CSOs, a requirement for permission may be brought to foreigners' CSOs for their operations. Regulations on this matter, however, must be similar to those regarding non-foreign CSOs. Foreigners' CSOs must not be forced to establish new and separate legal entities in order to be able to run their operations. The permission to operate may be revoked in the case of bankruptcy, the state of long-term dormancy or malpractice.[65]

Definitions are provided for "foreigners' associations", "foreign associations" and "foreigners' supreme organizations" in the "Law on Associations" and these are regulated differently than other associations. A foreigners' association is one whose "... founders are foreigners with permanent residency in the Turkish Republic of Northern Cyprus and/or have completed 6 (six) years of uninterrupted residence and/or have work permits in the Turkish Republic of Northern Cyprus. More than half of the membership must be composed of such individuals." A foreign association, on the other hand, is an association "registered by a state other than the Turkish Republic of Northern Cyprus, and these include supreme organizations whose headquarters are abroad." Finally, a foreigners' supreme organization is one with at least half of its membership composed of foreigners' associations.

The definition of "foreign association" as delineated by the "law" is acceptable, and so is the fact that different regulations are made with regards to these – as long as these regulations are consistent with international standards. Yet the categories of "foreigners' association" and "foreigners' supreme organization" based solely on the fact that all or part of their founders or members are not citizens must be abolished completely. The enactment of different regulations for these associations and supreme organizations based solely on citizenship is a violation of the freedom of association.

The rules by which an association comes to be considered a foreigners' association are regulated in the 14th article of the "law", with the statement: "When, in any association founded by citizens of the Turkish Republic of Northern Cyprus or by foreigners with the right to found associations or in any supreme organization where citizens of the Turkish Republic of Northern Cyprus have the majority of votes, foreigners gain the majority in terms of membership, the supreme organization in question becomes subject to the same status and conditions as foreigners' associations and/or foreigners' supreme organizations in accordance with this Law." The same article stipulates that in cases where foreigners gain the majority of membership, the "district governorate" of the district must be notified of this situation within 15 days. When the composition of an association's membership changes in favour of foreigners, this association may function as a foreigners' association and exercise its rights as such. When more than half of the members of an association founded by foreigners become citizens, however, there is no change in the status of the association or supreme organization in question. Foreigners' associations are subject to the same rules as other associations in terms of rights and obligations, save for exceptions explicitly stated in the "Law on Associations".

As per the 14th article mentioned above, associations and supreme organizations where foreigners become the majority of members shall be subject to the same conditions as foreigners' associations and foreigners' supreme organizations. In the 10th article of the "law" on supreme organizations, however, there is a provision that states that the number of foreigners' associations that may join a federation cannot be equal to or more than half of the total number of member associations. It is evident that these two articles contradict each other. This contradiction in the "law" must be resolved and removed.

While in the 20th article regulating the administration's powers of supervision it is considered adequate for associations and supreme organizations to submit annual declarations of their activities to their "district governorate", this reporting period is set as 6 months for foreign associations. Associations and supreme organizations are under the obligation to notify the "district governorate" of monetary aid they receive through banks and of any other aid in kind they receive from persons, institutions and organizations abroad.

[65] Rec(2007)14 and Explanatory Memorandum, p. 12, para 45.

When foreigners' associations and foreign associations are in question, on the other hand, their ability to receive aid in kind or in cash through banks is subject to the permission of the "Ministry in Charge of Interior Affairs". As may be seen, the "law" contains different provisions for foreign associations and foreigners' associations in terms of their ability to receive aid and procedures for their auditing when compared to any other association. These regulations that result in more bureaucracy obstruct the exercise of the freedom of association. It shall thus be appropriate for amendments to be made to the "law" so that all associations and supreme organizations are subject to the same provisions.

Foreign associations and supreme organizations may establish representative agencies in order to operate in the northern part of Cyprus. According to the "law", a representative agency is "a legal entity established so that foreign associations may carry out their activities within the Turkish Republic of Northern Cyprus, with the permission of the Ministry [in Charge of Interior Affairs] upon receiving the opinion of the Ministry in Charge of Foreign Affairs". A foreign association or supreme organization wishing to open a representative agency in order operate in or collaborate with other organizations in the northern part of Cyprus must be founded with objectives related to sports, health, human rights, the environment and/or running educational activities for those with disabilities, and their planned operations or collaborations in northern Cyprus must be consistent with their founding objectives. A foreign association or supreme organization attempting to establish a representative agency is obliged to present to the "Ministry in Charge of Interior Affairs" its notification of establishment, its certified statute to be obtained from its country of registration as well as a certified copy of its Turkish translation, the address of its representative agency, and a copy of the identity card or passport of the person appointed as representative. The "ministry" carries out the necessary investigation and examination of these documents and provides an answer within 60 days. If any activities in violation of the "Constitution" or any other "laws" in effect are found, the "ministry" revokes the permission it has given.

It is quite difficult for foreign associations or supreme organizations to establish representative agencies in order to operate in the northern part of Cyprus. Regulations governing the establishment of branches by other associations and those governing the establishment of representative agencies by foreign associations and supreme organizations are very different from each other. The first problem with regards to these regulations is the imposition of limitations on founding objectives. Only foreign associations or supreme organizations founded for objectives related to sports, health, human rights, the environment and/or running educational activities for those with disabilities may apply for the establishment of representative agencies. Furthermore, their planned operations or collaborations in northern Cyprus must be consistent with these founding objectives of theirs. The second problem that merits attention is the requirement for permission for the establishment of representative agencies. Representative agencies are subject to the permission of the "Ministry in Charge of Interior Affairs" upon receiving the opinion of the "Ministry in Charge of Foreign Affairs". While procedures of this sort with regards to other associations and supreme organizations are conducted by "district governorates", foreign associations and supreme organizations are required to carry out such processes with two ministries. The third problematic fact is that the criteria to be used by these respective ministries in making their judgment are unclear. Moreover, the expression "necessary investigation" has been used in the "law" while describing the evaluation to be conducted by the "Ministry in Charge of Interior Affairs". What is meant by this is quite obscure. Finally, the time period allowed for evaluation prior to the establishment of representative agencies by foreign associations and supreme organizations is 60 days, just like in the establishment and registry of other associations. As may be seen, the designated procedure for the establishment of representative agencies is hard to accomplish, open to arbitrariness and overly bureaucratic. Although it is possible for a requirement for permission to be put in place with regards to foreign associations and supreme organizations, the procedure determined by "law" has rendered the exercise of the freedom of association almost impossible. It would be appropriate for the "law" to be amended so that the limitations in terms of founding objectives are removed, foreign associations and supreme organizations are able to apply to "district governorates" for permission, and the evaluation required is merely a procedural one to check for consistency with the "Constitution" and other legal texts – just like it should be for the establishment and registry of other associations.

C. MANAGEMENT

Those in charge of the management of a membership-based CSO must be chosen or determined by its highest governing body or by another body it assigns for this duty. In CSOs that are not membership-based, on the other hand, the governing body must be determined in accordance with the CSO statute. CSOs must form governing and decision-making bodies in line with the provisions in their statutes, and must not need to receive permission from a public authority when changing their structures and internal rules. As long as actions regarding the appointment, election or change of directors are not in violation of laws that are compatible with international standards or in violation of the CSO statute, these must be up to CSOs themselves. The only exception to this is cases where the persons in question have been convicted of a crime that renders them ineligible for this duty. If so, the CSO's discretionary authority may not apply, and these persons may be prevented from taking part in its administration. This kind of external intervention must, however, be proportionate in terms of scope and time frame.[66] Intervention into CSO management may only take place in very exceptional cases. Such an intervention may only be deemed reasonable when it takes place in order to put an end to a serious violation in terms of legal obligations, if the CSO in question has, for instance, failed to prevent a violation regarding its legal obligations, or if a violation that shall have serious consequences unless it is prevented is in sight. Normally, CSO members must follow up on disputes they experience in terms of their rights themselves, through lawsuits they file.[67] The participation of any person in the management of a CSO must not depend on their being a citizen. If restrictions are to be imposed regarding the participation of civil servants in the management of a CSO, these must be in line with restrictions in place regarding their membership in CSOs.[68]

According to the "Law on Associations" every association and supreme organization (federations and confederations) must have a general assembly, auditing board and executive board. Associations and supreme organizations may also form other bodies in addition to these mandatory ones, as long as the duties and authorities of these are clearly delineated in their statutes. They may not, however, transfer the duties, authorities and responsibilities of their mandatory bodies to these additional bodies they form. Procedures by which and times when meetings of the general assembly are to be convened, its duties and authorities, its procedures for voting and decision-making as well as the procedure by which invitations to such general assembly meetings must be made; procedures for convening an extraordinary general assembly meeting including invitations, achieving quorum, and decision-making; the way in which the executive and auditing boards of the association are to be chosen as well as their duties and authorities, and numbers of full and substitute members; procedures and rules regarding the formation of the auditing body in the first general assembly meeting have been listed among the elements required in an association statute by the "law". The regulation on supreme organizations, on the other hand, requires the procedures by which and times when meetings of the general assembly are to be convened, its duties and authorities, its procedures for voting and decision-making, the way in which the executive and auditing boards of the supreme organization are to be chosen as well as their duties and authorities, and numbers of full and substitute members to exist in the statute of a supreme organization.

The general assembly is composed of the association or supreme organization's registered members and it is the highest decision-making body of the association or supreme organization. If a shorter time frame has not been prescribed by the statute of the association or supreme organization, the general assembly meets once every two years. It elects the various bodies of the association/supreme organization, monitors these, and carries out other duties stipulated by its statute. The executive board consists of the number of members determined in the statute of the association/supreme organization, and may not have less than two members. It operates as the executive and representative body of the association/supreme organization. It carries out its duties in accordance with the "Law on Associations" and the statute of the association or supreme organization. One of the members of the executive board may be chosen as chair and/or coordinator, and this person may therefore represent the association/supreme organization in the name of the executive board.

66 Rec(2007)14 and Explanatory Memorandum, p. 28-29, para 46-48.

67 Guidelines, p. 63, para 177.

68 Guidelines, p. 62, para 173.

After the executive board has been formed, one or more members may be authorized to carry out executive and representative duties. The auditing board also consists of the number of members determined in the statute of the association/supreme organization, and may not have less than three members. It carries out its monitoring duties, in line with the principles and procedures specified in the association or supreme organization's statute, and presents the results it reaches to the executive board and general assembly in the form of a report.

As per the requirement for notification according to the "Law on Associations", associations and supreme organizations are under the obligation to notify the "district governorate", within 15 days of their general assembly meeting, of the full and substitute members chosen to serve on the executive and auditing boards of their association/supreme organization, or on any other bodies if these have been formed. Associations and supreme organizations also must inform the "district governorate" of any changes that take place in any one of their bodies within 15 days.

There are different regulations for children aged 7-15 and those aged 15-18 in the "Law on Associations". Children above the age of seven and younger than 15 may only become members of children's associations and with the written permission of their parents and/or guardians. They may not, however, serve on the executive and auditing boards of the association. Children over the age of 15 may found children's associations and take part in their administration.

Three separate "laws" regulate the entry of members of the armed forces into CSOs. These are the "Armed Forces Internal Service Act", the "Public Security Officers Law" and the "Law on the Establishment of Disciplinary Courts, Disciplinary Misconduct and Punishments, and Trial Procedure". These legal texts contradict each other in terms of their provisions on members of the armed forces joining CSOs.[69] According to these "laws", there is no prohibition on members of the armed forces taking part in the management of associations they are able to join in the first place.

The "Law on the Policing Organization (its Establishment, Duties and Authorities)" states that members of the police forces may found police associations among themselves on occupational matters such as wages, working conditions and personal rights. Police associations may form no relationships whatsoever with other associations. Members of the police forces may not transgress the rules codified in the "Law on the Policing Organization (its Establishment, Duties and Authorities)" when engaging in activities related to their association, and they may not join the membership of any association other than the Police Association. They may only become members of clubs, associations or ensembles with sportive, cultural or social purposes upon written permission by the Chief of Police.[70] While the "law" prescribes disciplinary punishment for civilian service employees for participating in the management of an association, it does not do so for other members of the police force. Becoming the chair or member of the board of directors of an association has been listed among actions and behaviours that must be punished by dismissal from public service for civilian service employees within the Policing Organization. This penalty (any member of the police forces who is fired from duty is also considered dismissed from public service) is very heavy and disproportionate. Even if it is believed that such an action requires disciplinary punishment, the punishment determined must be proportionate with the act in question. Furthermore, this regulation also includes taking part in the management of police associations. It is completely incomprehensible and unacceptable for civilian service employees to face dismissal from public service for taking part in the administration of police associations. Even if the regulation in concern is to be retained, police associations must be taken out of its scope.

According to the "Code of Regulations for Foundations (Annexed -Mülhak- Foundations), "Annexed foundations established after 1980 and deemed 'Contemporary Foundations' by decision of the High Council[71]... are governed by a trustee or board of trustees as specified by the foundation deed. The trustees or members of the boards of trustees of such foundations are determined by their authorized decision-making bodies in

[69] This issue is treated in detail in the section titled "Membership".

[70] This issue is treated in detail in the section titled "Membership".

[71] According to the 43rd article titled "High Council" in the "Law of Foundations", "Since the High Council has been made defunct by the 55th article of the Turkish Community Assembly Law no. 12/60 on Organizations regarding Foundations and Religious Affairs, this article is no longer valid."

accordance with their foundation deed and the rules listed in this Code of Regulations … and the Directorate of Foundations is given written notification of this." For a person to be eligible to be a trustee they must permanently reside in the northern part of Cyprus, be an adult, have not been convicted of a crime that damages their reputation or any crime that is punishable by more than six months in prison (This shall be proven by certified documentation to be obtained from the Police), be mentally and bodily capable of the successful administration of a foundation (This shall be proven by certified documentation to be obtained from a doctor seen fit by the High Council), have good and proper morals in all senses possible, have not priorly been dismissed from the trusteeship of any foundation, succeed in the exam conducted in order to test whether they have the necessary skills and knowledge for the successful administration of a foundation (Graduates of a secondary or higher education institution shall be exempted from this exam), and have the qualities listed in the foundation deed (vakfiye) as necessary for the duty to care for foundation property. They must also pay the required security deposit. The amount required and how this shall be determined is not specified within the legislation. In practice, however, it is observed that 10,000 USD is the amount required for such deposits.

The Code of Regulations stipulates that the governing body (the trustee or members of the board of trustees) of a contemporary annexed foundation is determined in line with the foundation deed and the Code of Regulations. A myriad of requirements and conditions have been listed in the Code of Regulations for eligibility for trusteeship or membership in a board of trustees. One of said conditions is that a person who wishes to become a trustee or a member of a board of trustees must "have not been convicted of a crime that damages their reputation or any crime that is punishable by more than six months in prison". It is unclear what is meant by "crimes that damage a person's reputation". There are no crimes and punishments regulated under this category in the "Criminal Code". It may be considered reasonable for conviction from crimes such as theft, fraud, bribery, corruption, embezzlement, which give rise to doubt regarding their perpetrator's successful administration of a foundation, to affect one's eligibility for trusteeship or membership in a board of trustees. It is not, however, acceptable for there to be a category as ambiguous as "crimes that damage a person's reputation", since it is unclear which crimes exactly constitute this category. When considered along with the "Criminal Code" it also becomes evident that the requirement to "not have been convicted of any crime that is punishable by more than six months in prison" is quite problematic. For instance, "Any person who has in their possession or carries a sharp knife in a wedding or street fair or brothel or any place which is licensed to sell alcohol is considered to have committed a petty crime, and is punishable by up to two years in prison … as long as it is not deemed appropriate to issue a lighter sentence or other decree, upon taking into consideration all circumstances surrounding the event including the complications specific to the person convicted and other extenuating circumstances, a minimum prison sentence of up to one year may be given." In light of this regulation, a person who commits the crime of "carrying a knife" may not be able to become a trustee or the member of a board of trustees even though the crime in question has nothing to do with the administration of a foundation. Moreover, this requirement of "not having been convicted" brought by the Code of Regulations imposes an absolute and indefinite prohibition on people's freedom of association.Another condition listed in the Code of Regulations is "being mentally and bodily capable of the successful administration of a foundation". This is an obstacle for persons with disabilities who wish to become trustees or members of boards of trustees. Yet another one of the conditions set in the Code of Regulations is "having good and proper morals in all senses possible" – a requirement with regards to which objective evaluation is impossible and which therefore allows for arbitrariness. As may be seen, almost every single one of the requirements listed in the Code of Regulations for eligibility for trusteeship or membership in a board of trustees is of the sort that either obstructs the exercise of the freedom of association or clearly violates the right to this freedom. All of these conditions must be repealed and the Code of Regulations must be rendered consistent with international standards.

D. FUNDRAISING, RIGHT TO PROPERTY AND PUBLIC SUPPORT

1. Fundraising and Donations

The fundraising activities of CSOs are part of the freedom of association. CSOs must be free to solicit and accept aid in cash as well as in kind not only from the public institutions of their own states, but also from other institutional or individual supporters,

other states and multinational organizations. Certain restrictions may be brought against collecting donations based on legal regulations regarding customs, foreign currencies, money laundering, and the financing of elections and political parties.[72]

According to the 16th article of the "Law on Associations", "The income of an association or supreme organization consists of membership fees, shares and contributions, aid and donations, revenues obtained through association activities and through association property, support received from public institutions and organizations through banks, and other legal revenues." Associations and supreme organizations carry out their fundraising activities in accordance with the "Law on Collecting Aid on the Streets and from Door to Door". The "Law on Foundations" includes no regulations on collecting aid. It would be more appropriate for the fundraising and donation collection activities of CSOs to be regulated within the fundamental "law" governing each CSO type, such as the "Law on Associations" and the "Law on Foundations", for CSOs to be kept outside the scope of the "Law on Collecting Aid on the Streets and from Door to Door", and for this "law" to instead be implemented with regards to actual persons and other types of legal entities that solicit aid.

The "Law on Collecting Aid on the Streets and from Door to Door" defines collecting aid as "appealing to the public or to a certain part of it to give with or without recompense money or goods that are not owed as maturing debts according to any "law", contract or other legal obligation, by going from door to door, or collecting for charity on the streets or in any public place, or by using both methods at once." Any person who wishes to organize charity collections must obtain a permit. The Office of Regulatory Affairs is the body authorized to provide permits. As the competent authority for the provision of permits within the boundaries of any municipality, its director is the "district governor" of the district and members are the mayor and the head or representative of the district police. If the region in question is one outside the boundaries of any municipality, the Office of Regulatory Affairs is the person of the "district governor" of the district.

"The regulation of subjecting the collection of aid to permission does not comply with the freedom based approach. Imposing the obligation of obtaining permission from the state in cases where the monetary aid is given by private law natural or legal entities is considered an illegitimate intervention to the freedom of association."[73] The fundraising activities of associations and foundations may be monitored through their own declarations. Therefore, it should be reevaluated whether or not a separate auditing mechanism is in fact necessary, and even if it is deemed necessary then methods that violate the freedom of association should be revoked and progressive methods in line with international standards should be identified.

In order to obtain a permit, a petition must be submitted to the "district governor", as the director of the Office of Regulatory Affairs, and the purposes for the collection of aid must be stated within this petition. The provision of permits has thus been left to the absolute discretion of the Office of Regulatory Affairs. This office may or may not provide the requested permit, or may provide it based on requirements and conditions it sees fit. The only exception that limits this absolute discretionary power of the Office of Regulatory Affairs is that it is not allowed to provide a permit if it reaches the conclusion that the objective for the collection of aid is illegal, fictive or detrimental to public interest. All reasons for approval or rejection other than this have been left completely to the iniative of the Office of Regulatory Affairs. The permit given is signed by the "district governor" as the director of the Office of Regulatory Affairs. Aid may not be collected unless the requirements prescribed by the relevant "law" are fulfilled. The fundraising activities of associations and supreme organizations have thus been rendered dependant on the obtainment of a permit, and the Office of Regulatory Affairs in charge of providing this permit has been given unlimited discretionary power on the matter. Rules with regards to the collection of aid by associations and supreme organizations must be regulated in the "Law on Associations". If this kind of amendment shall not be made, then the requirement to obtain a permit must be removed from the "Law on Collecting Aid on the Streets and from Door to Door", and a notification must be deemed sufficient. Furthermore, irrespective of whether a permission or notification is required for the collection of aid, the powers of the Office of Regulatory Affairs must be limited. The Office of Regulatory Affairs is an

[72] Rec(2007)14 and Explanatory Memorandum, p. 13, para 50.

[73] Ayata ve Karan, p. 77.

administrative body and it is thus possible to file administrative lawsuits against its decisions, but this is not at all a cheap course of action. Objective criteria for the decision-making process of the body authorized to deal with permissions or notifications regarding the collection of aid must be determined, and regulations that are clear, understandable and consistent with international standards must be formulated.

Collecting aid without a valid permit is a crime according to the "Law on Collecting Aid on the Streets and from Door to Door". In the absence of a permit authorizing its holder to organize activities for the collection of aid and valid for the entire period of aid collection, the person or persons who organize the aid collecting activities in question, and the person or persons who act on their authority are considered to have committed a criminal offense. These person or persons may be given a fine or a prison sentence up to one year or both penalties at once. Any person who does not abide by or acts in violation of the conditions listed in a permit provided by the Office of Regulatory Affairs is also considered to have committed a crime. Anyone who displays or uses an emblem or certificate of authority except for those whose use in the collection of aid has been permitted, or who uses or displays these even though they are not an authorized collector of aid with the intention, thought or for the chance that this may give others the impression that they have such authorization is again considered to have committed a crime. Anyone who consciously makes a false statement, or does so for lack of caring whether the statement is correct or not, on a fundamental matter when giving information about the collection of aid is also considered to have committed a crime. Any person who has committed one of the crimes regulated by this "law" may be sentenced to a fine or up to six months in prison or both penalties at once, unless a specific punishment is prescribed for the crime in question. Special types of crime have thus been formulated in the "law", and a prison sentence between 6 months and 1 year has been foreseen in addition to a monetary fine. A prison sentence is a heavy form of punishment for crimes related to the collection of aid. On top of this, the "law" allows for both a prison sentence and a monetary fine to be issued at once. When crimes such as "fraud", etc. have already been regulated in the "Criminal Code", it is not appropriate for the "Law on Collecting Aid on the Streets and from Door to Door" to specify special crime types and prescribe prison sentences for these crimes. It would be more fitting for the "Law on Collecting Aid on the Streets and from Door to Door" to exclude regulations regarding crimes, and to instead refer to the "Criminal Code" on these matters. If this shall not be done, then at least crimes related to the collection of aid should no longer be punishable by time in prison.

Uniformed members of the Policing Organization may arrest anyone in the process of committing a criminal violation of the "law" without needing a warrant.[74] They may seize the money and goods collected by this person. This is quite a heavy preventive measure. According to the 14th article of the "Criminal Procedure Code" police officers are able to arrest without warrant in specific cases. One of such cases listed in the 14th article is the arrest of any person with regards to whom there is legislation in effect allowing for arrest without warrant. The "Law on Collecting Aid on the Streets and from Door to Door" provides such authority to uniformed police officers. Considering the collection of aid a crime only due to the absence of a permit – as in, to its having taken place without permission, making arrests in these cases, and seizing the money and goods collected without any prior investigation and without exception is a heavy punishment. As mentioned above, it would be more fitting for the "Law on Collecting Aid on the Streets and from Door to Door" to exclude regulations regarding crimes, and even if such regulations shall be included then at least they should not involve a prison sentence. In conjunction with this, the authority to arrest without warrant given to uniformed police officers must be withdrawn.

A person who is prosecuted against due to an act in violation of the "Law on Collecting Aid on the Streets and from Door to Door", bears the burden to prove that they obtained a permit from the Office of Regulatory Affairs in accordance with the rules in the "law". If any legal entity, society, association or group formed by actual persons commits one of the crimes regulated by this "law", everyone who monitors or governs or is responsible for monitoring or governing the work and activities of that legal entity, society, association or group is considered to have committed that crime, and may be punished accordingly. If a person of this sort, however, proves that they were not aware that this crime was being committed or was about to be committed,

[74] Warrant: a writ sent by judiciary authorities to another authority for the implementation of a judicial order.

or that they could not prevent it despite taking all reasonable precautions, without any fault or negligence on their own part they are not subjected to any punishment.

If the trial of a person for any one of the crimes listed in this "law" results in a conviction, the court may order money or goods it has been presented, or is in its custody or the custody of the police or of any civil servant, which it deems to have been procured by way of the crime in question to be returned to its owner or confiscated[75] or seized[76]. The "law" also regulates the confiscation or seizure of money and goods for which an owner cannot be determined. Confiscation and seizure are the most effective interventions made through criminal law to the right to property. For this reason, the way in which and circumstances under which these measures shall be implemented must be regulated tightly. Collecting aid without a valid permit is a criminal offense according to the "Law on Collecting Aid on the Streets and from Door to Door". Considering the collection of aid a crime only due to the absence of a permit, and confiscating or seizing the money and goods collected is both a heavy punishment and a serious intervention into the right to own property. While the criticisms and recommendations made above with regards to the other crimes regulated by this "law" still stand, it must especially be emphasized that the collection of aid without the obtainment of a permit should not be defined as a criminal offense.

The "Council of Ministers" may exempt any person from the regulations in the "Law on Collecting Aid on the Streets and from Door to Door" by way of an announcement it shall publish in the "Official Gazette", provided that he or she abides by the requirements and conditions it chooses to impose. This discretionary power given to the "Council of Ministers" runs the risk of giving rise to inequality among CSOs and arbitrariness in practice. How the content of the requirements and conditions seen fit by the "Council of Ministers" to exempt a CSO from the provisions mandated by the "law" shall be determined and how their objectivity shall be ensured is completely obscure. Furthermore, the fact that certain CSOs become subject to different conditions by being exempted from the regulations in the "law" creates inequality. For this to be resolved, it would be more appropriate for the collection of aid to be subject to notification only.

According to the "Law on Associations" associations and supreme organizations may generate income by way of organizing lotteries and raffles. For an association to be able to organize these, however, it must have more than 25 members. Written permission must be obtained from the "district governorate" in order to hold lotteries or raffles. This permission must include details on the number of tickets to be printed, how much they will be sold for, and the prize that will distributed. If associations and supreme organizations have not submitted their financial statement, in which they list their annual activities and results of their income and expenses, within the legal time limit, they may not apply to organize lotteries or raffles before fulfilling this obligation.

Associations and supreme organizations must carry out activities related to lotteries and raffles in accordance with rules stipulated by the "Law of Lotteries". The 7th article of the "Law of Lotteries" titled "The Exemption of Private Lotteries" lists the rules for the organization of lotteries by CSOs. According to this article, associations may organize "private lotteries". Within the scope of this article, "association" signifies forms of association established by persons under any name whatsoever, including clubs, institutions and organizations, and every local branch of an association is considered an independent and separate association. Those who may buy tickets or participate in private lotteries are limited to members of an association founded and operating for objectives unrelated to gambling, betting or lotteries, persons who all work in the same workplace or reside in the same building. Organizers must also be from among those who may buy tickets or participate in the lottery. In the case that a lottery has been organized for the members of an association, the organizer must be authorized in writing by the association's board of directors. In addition to all of this, private lotteries must be held in the northern part of Cyprus.

[75] Confiscation: a form of sanction that results in the state acquiring the ownership of the property or money in question. As a result of a crime committed, the perpetrator loses ownership of all or part of their assets, and this ownership is transferred to the state.

[76] Seizure: the procedure of terminating the ownership and authority of the possessor (of an item) without their consent, for the prevention of a crime, or because the item in question may be evidence to a crime, or because it is subject to confiscation.

According to the "Law of Lotteries" private lotteries are not considered illegal lotteries. Yet these must fulfill all of the conditions listed in the 7th article in terms of the organization and execution of the lottery. All revenue gained from the lottery must be set aside to be distributed as prizes to those who bought tickets, after printing and stationery expenses have been covered. If the lottery in question has been held for the members of an association the amount remaining after printing and stationery expenses have been covered must either be distributed as prizes or set aside for the association's objectives, or a portion must be distributed as prizes and what is remaining must be set aside for the association's activities. Written announcements or advertisements regarding private lotteries may not be displayed, published or distributed. Only an announcement may be hung in the association's office if the lottery is organized for the members of an association, or in the workplace or place of residence if it is organized for persons working in the same workplace or residing in the same building. In addition to this, it is permissible for the announcement or advertisement of the lottery to made upon its tickets. In private lotteries, all tickets or tokens of chance must cost the same amount, and this cost must be specified upon the ticket itself. The name and address of the organizer of the private lottery, information regarding persons authorized to sell tickets by organizers, and a statement that the prize may not be given to any person other than the one who has purchased the winning ticket or token must all be written on the front of the ticket. The prize must only ever be given or handed over in accordance with this statement. Organizers may only give or reserve tickets or tokens through sale, and only in the case that they receive a payment worth the total cost of the ticket or token. The money or valuable items received or collected as the cost of tickets or tokens may not be returned under any circumstance. Lottery tickets may not be sent via mail. If lottery organizers violate any one of these conditions they are considered to have committed a criminal offense. If it is someone other than an organizer who is responsible for this violation then that person is considered to have committed a crime too. They may be sentenced to up to 6 months of prison or a monetary fine, or both penalties at once. If a person who is sued as the organizer of a lottery is, however, able to prove that this crime has been committed unbeknowst to his or herself, this constitutes an effective defence.

While it is positive that associations and supreme organizations may organize lotteries and raffles in order to generate income, the regulations part of the "Law on Associations" and the "Law of Lotteries" obstruct this to a large extent. Especially the minimum number of members required to be able to organize lotteries or raffles, the fact that these may only be held for association members or those who work in the same workplace or reside in the same building, the rules that must be followed in terms of the tickets to be printed, the fact that not abiding by the rules listed in the "Law of Lotteries" constitutes a crime that is punishable by a prison sentence all render the organization of lotteries and raffles quite difficult. It is clear that CSOs are in need of resources in order to be able to fulfill their objectives and continue their operations. There is therefore a blatant link between developing resources and the freedom of association. Hence, CSOs must not be made to face so many obstacles when attempting to develop resources for their activities. It would be appropriate for regulations to be amended so that the requirement regarding the minimum number of members for a lottery or raffle be removed, notification be considered sufficient instead of asking for permission, and lotteries and raffles be made open to the public rather than only to certain persons. The "Law of Lotteries" defines any violations of the rules it prescribes as crimes, and those who commit these crimes may be sentenced to prison, to a monetary fine or both penalties at once. Acts in violation of the relevant regulations in the "Law on Associations" are also considered criminal offenses, and the punishment prescribed for these is a monetary fine. Even if criminal punishments are deemed necessary with regards to the regulation on lotteries and raffles, a prison sentence is a very heavy punishment. A proportionate monetary fine must be determined instead.

According to the 22nd article of the "Law on Associations" titled "Receiving Aid from Abroad and Permission by the Ministry", associations and supreme organizations may receive aid in cash from persons, institutions and organizations abroad through banks. They are, however, under the obligation to notify the "district governorate" with regards to their project for which the financial support they receive shall be used. They must also inform the "district governorate" with regards to aid in kind, made under any name whatsoever, by persons, institutions and organizations abroad. There is therefore a notification requirement regarding the aid associations and supreme organizations receive from abroad. Associations and supreme organizations are also obliged to submit annual declarations regarding their income and expenses to the "district governorate" of their district. The notification of all aid coming from abroad in addition to this obligation

to provide annual reports is nothing but a bureaucratic burden. Lifting this must be considered.

The 22nd article of the "law" includes regulations on foreigners' associations and foreign associations. According to these regulations, foreigners' associations and foreign associations are under the obligation to obtain permission from the "Ministry in Charge of Interior Affairs" in order to receive monetary aid through banks. Foreigners' associations must obtain permission from the "Ministry in Charge of Interior Affairs" to receive aid in kind as well. In regulations within the article regarding foreigners, the fact of whether or not the aid in question comes from abroad has not been taken into account although this is the title of the article itself; instead, permission from the "ministry" has been required for the reception of all aid. The article includes mention of aid in kind to be received by foreigner's associations, but in the section on foreign associations it only mentions aid in cash to be received through banks. First of all, the text itself must be clarified and rendered more understandable. Parts creating confusion as to which rule shall be applied to what association, as well as uncertainty resulting in differences and arbitrariness in practice must be removed from the "law". Secondly, a CSO that includes foreign elements yet has gained the right to operate in the northern part of Cyprus in accordance with legislation in effect must be able to collect aid following the same procedures as other CSOs. The requirement to obtain permission from the "ministry" must therefore be lifted, and different procedures put in place for foreigners' associations and/or foreign associations must be abolished.

2. Right to Property

In the "Constitution", the right to property has been guaranteed for citizens only. According to the "Constitution" every citizen has the right to ownership and inheritance. In the relevant article of the "Constitution" it is stated that "Restrictions or limitations which are absolutely necessary in the interests of public safety, public health, public morals, as well as for urban or national planning or development, the utilization of any property for public benefit or for the protection of the rights of others may be imposed by law on the exercise of the right to property." In the 1st article of the Additional Protocol No.1 of the ECHR, the right to own property is guaranteed as follows: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law." As may be seen, the provisions in the "Constitution" contradict those in the Convention. In the Convention, everyone is considered entitled to the right – every natural or legal person – while the "Constitution" defines only citizens as those in possession of the right to own property. While the Convention stipulates that the right may only be limited for public interest and in accordance with the principle of legality, the "Constitution" includes other reasons for restriction such as public morals or urban or national planning. The "Constitutional" provision on the right to own property must be rendered consistent with international standards, both in terms of those it deems entitled to the right and in terms of reasons it provides for limitation.

According to the "Law on Legal Entities (the Registry of Immovable Property)" legal entities may own property. The "law" also includes "Any charity, organization or society for aid or athletic activities or socially-motivated organization or society that has not been established and is not operated for commercial gain" within the scope of the term 'legal entity'. All immovable properties acquired by a legal entity and registered in its name are considered to be possessed jointly by that legal entity and in its name. In the case that a charity or organization or society for aid or athletic activities or socially-motivated organization or society applies to have immovable properties registered in its name, the executive committee or chair of the board of directors must submit a written oath to the Director of Land Registry and Cadastre that this organization or society has not been founded for commercial gain, but solely for charitable, athletic or social purposes. The Director of Land Registry and Cadastre is not charged with evaluating and determining the validity of procedures carried out by a legal entity or in its name; hence, upon seeing that the documentation provided for registry and transfer is correct in terms of rules mandated by the "law" the Director may execute the registration in question or allow for the immovable property registered in the name of a legal entity to be disposed of.

The "Law on Associations" states that associations and supreme organizations may purchase or sell immovable property upon decision by their executive board authorized by their general assembly. Procedures regarding the acquisition of property by foreigners's associations and foreign associations are, however, regulated by the "Law on the Acquisition and Long-term

Renting of Property (for Foreigners)". According to this legal text, the term 'alien' means an actual person who is not a citizen, as well as foreign legal entities. "Institutions, organizations, associations, foundations, clubs and similar civil society organizations in which the majority of votes belong to foreigners or is in the hands of persons who vote in the name of foreigners" and "associations, foundations, clubs, and similar civil society organizations who are controlled in any shape or form by foreigners" are listed among foreign legal entities in the "law".

The "Law on the Acquisition and Long-term Renting of Property (for Foreigners)" allows for the "Council of Ministers" to publish a charter and determine that, upon its publication, foreigners may no longer acquire the ownership of any immovable property in ways other than inheritance within areas specified by the charter. Any registry in the Directorate of Land Registry and Cadastre in violation of the rules in such a charter is considered invalid. Furthermore, the "Council of Ministers" may also limit the purchase or long-term renting of immovable property by certain actual foreign persons or legal entities or the directors, managers, share-holders or members of foreign legal entities due to the special status of these persons or for reasons that the immovable property to be rented or bought is one that may endanger national security or public order. Any registry in the Directorate of Land Registry and Cadastre in violation of such a decision is considered invalid. These rules are also applied to the transfer of the ownership of any immovable property acquired in a legal manner by one foreigner to another.

According to the 9th article of the "Law on the Acquisition and Long-term Renting of Property (for Foreigners)", "Actual foreign persons or foreign legal entities may purchase immovable property within the boundaries of the Turkish Republic of Northern Cyprus upon obtaining permission from the Council of Ministers." Rules within the 8th article of the "law" are applied with regards to this matter. If the immovable property in question is a land lot, its acreage may not be more than 1 dunam (worth about a thousand square metres); if it is a residence or apartment flat, the lot upon which it exists may not be more than 5 dunams and other residences or apartment flats may not be constructed on the same land. The "Council of Ministers" may allow purchases made for investment purposes without taking rules regarding acreage into consideration. For this kind of permission to be given, the foreigner making the purchase for investment purposes must deposit at least three million Euros in a bank operating in the northern part of Cyprus, and must use this amount for investment. If the "Council of Ministers" determines that this sum has not been used for investment purposes, it cancels the permission it has given.

The 25th article of the "Law on Associations" regulates procedures for the liquidation of associations and supreme organizations. According to the article, the liquidation of the funds, properties and rights of an association or supreme organization that is dissolved upon the decision of its general assembly or that expires automatically is carried out according to principles stated in its statute. If the association or supreme organization has been shut down by court order, however, all of its funds, properties and rights are transferred to a budget item seen fit by the "Ministry in Charge of Financial Affairs" by court order on condition that third persons retain the right of recourse. The court may rule to shut down an association or supreme organization against which a lawsuit has been filed in the name of protecting national security or public safety, ensuring public order and preventing the commitment of a crime, as well as preserving the rights and liberties of others. It is not appropriate for the rights and properties of associations and supreme organizations shut down by court order to be transferred directly to a budget item seen fit by the "Ministry in Charge of Financial Affairs", without considering the statute or closure reasons of the association or supreme organization in question. If it is the case that all the assets of an association or supreme organization have been acquired as a result of a crime committed – and this is highly unlikely – then such sanctions may come to mind, yet if this is not so, it is better for this intervention into the right to own property, which fully disregards the will of association members, to be removed from the "law".

According to the 22nd article of the "Law on Foundations", in cases where it is not clearly stated or demonstrated that an endowment is temporary, the endowment is considered permanent, for all eternity, and is valid as such. From the moment the foundation deed is officially registered, foundation property may not be given or transferred to others by the endower or by a trustee, neither can their heirs inherit this property that has been endowed upon a foundation. If this takes place illegally, any person related to the objectives of a foundation may file a lawsuit for its invalidation. The endower may be authorized by the foundation deed to

exchange any land lot endowed upon a foundation with another land lot, or sell the land lot and purchase another one of equal value. According to the 34th article of the "law", a trustee may not sell or give as mortgage foundation property, unless there are provisions in the foundation deed stating that he or she may do so. If a court is convinced that foundation land is no longer suitable for the objectives of said foundation, it may order the sale of this land lot. Any trustee who carries out such an act without having the authority to do so is considered to have committed a crime and may be suspended from duty by court order.

3. Public Support

CSOs must be able to carry out their activities in order to realize their objectives, and for this they must have adequate resources. They should therefore be assisted in the pursuit of their objectives through public funding and other forms of support, such as exemption from income and other taxes or duties on membership fees, funds and goods received from donors or governmental and international agencies, income from investments, rent, royalties, economic activities and property transactions, as well as incentives for donations through income tax deductions or credit. In cases where public support may be received, this opportunity should be governed by clear and objective criteria. The nature and beneficiaries of the activities undertaken by a CSO can be relevant in deciding whether or not to grant it any form of public support. A fundamental change in the statutes or activities of CSOs can lead to the alteration of the scope or to the termination of any grant of public support they have received.[77]

"The Law on the Establishment, Duties and Operating Principles of the Board of Finance, Inspection and Review" aims to regulate "the inspection and review of the acquisition, management and disposal of State assets in terms of Financial and Administrative aspects by the Board of Finance, Inspection and Review, in accordance with the Constitution and other laws and protecting the interests of both the State and Citizens at once, and if necessary the filing of claims for damages, and initiation of criminal or disciplinary proceedings against persons of interest." The Board of Finance, Inspection and Review is formed to carry out the duties mandated by this "law". The Board operates directly under the "Ministry in Charge of Financial Affairs", and is composed of a president, two vice-presidents and an adequate amount of technical personnel. Among the duties of the Board, one is to monitor associations, institutions and foundations that receive aid from the administration.

The "Corporate Taxation Law" stipulates that corporate tax is to be paid for the financial enterprises of associations and foundations. According to the 5th article of the "law", commercial, industrial, turistic and agricultural enterprises belonging to or operating under associations and foundations, that are active in a sustained manner and are not part of corporations, as well as foreign enterprises that display the same qualities are the financial enterprises of associations and foundations. The fact that these do not seek profit, have no legal personality, have no separate accounts or separate capital allocated to them does not affect their obligations in any way. Corporate taxes are levied[78] from financial enterprises without legal personality belonging to associations and foundations in the name of the association or foundation they operate under.

Corporate taxes are determined upon declaration by the liable party or tax payer. This declaration or statement includes results regarding the relevant period of calculation. Every tax payer submits such a declaration regardless of whether they have been active or have had an income in the taxation period. This declaration consists of all income subject to taxation. Associations or foundations may submit separate declarations for each and every one of the financial enterprises belonging to them.

According to the 7th article of the "Corporate Taxation Law" schools, educational workshops, conservatories, general libraries, theatres, museums, exhibitions, plant nurseries, seed and animal improvement and breeding stations, publication houses for books, newspapers, magazines and journals and similar institutions founded and operating under associations and foundations for the teaching, spreading, improvement and encouragement of science and fine arts, as well as agriculture and animal husbandry, and recognized by the

[77] Rec(2007)14 and Explanatory Memorandum, p.14, para. 57-61.

[78] Levy a tax: an administrative procedure by which taxes due are calculated through an application of assessed tax tables determined in a variety of ways by the tax administration.

"Ministry in Charge of Financial Affairs", upon requesting the opinion of the relevant ministry, to be operating for the stated purposes and objectives; hospitals, nursing homes, clinics, dispensaries, preventoriums, senatoriums, children's nurseries, animal hospitals and dispensaries, animal care facilities, veterinarians, as well as institutions for bacteriology, serology, and immunology operating for the purpose of preserving and treating general human and animal health; institutions such as charity, pawn and social aid funds, soup kitchens for the poor, prisons and correctional facilities, workshops, hospice workshops, social insurance institutions, student dorms and hostels run for societal purposes; local, national or international exhibitions, fairs and expos opened with permission from the "Council of Ministers" or from competent administrative authorities are exempt from corporate tax. Sports and youth institutions belonging to associations, as well as alcohol-free clubhouses and restaurants associations run for the benefit of their members only are also exempt from corporate tax. Income generated from the commercially-motivated production, services and other activities of associations, however, does not fall under the exemption provided by this article.

In the 14th article of the "Corporate Taxation Law" it is stated that in determining the income generated as commercial gain, aid and donations given against receipt to charitable institutions such as associations, foundations, etc. for purposes approved by the "Parliament" may also be discounted from the total revenue. Donations and aid may be deducted from the total income generated in the year they were given, yet donation and aid that exceed 5% of taxable income may not be deducted as such. A change in policy to allow for the deduction from taxable income of all donation and aid, and to therefore encourage the supporting of CSOs, would be a positive step in facilitating the strengthening of civil society.

In accordance with the "Income Tax Law", all income generated by actual persons residing within the boundaries of the northern part of Cyprus in one calendrical year both within the boundaries of northern Cyprus and abroad is subject to income tax. Hence, these persons are under the obligation to pay income tax for these revenues they gain. In calculating the amount to be paid as income tax, net profit must be determined, and for this, expense items listed in the "law" are deducted from the total amout gained. According to the 8th article of the "Income Tax Law", the aid and donations given against receipt to institutions established through legal procedures to support their educational, health-related, cultural, artistic, sportive and scientific activities, to active sports clubs registered under sports federations, and foundations and charities founded for similar purposes with the approval of the "Council of Ministers", as well as prizes or rewards given to those who achieve success while representing the nation in scientific, cultural, artistic or sportive competitions abroad may be deducted from the income generated in the year in which they were given. This amount may not, however, exceed 10% of the total gain. Income generated through sponsorship agreements with institutions formed through legal procedures, active sports clubs registered under sports federations, as well as expenditures to support educational, health-related, cultural, artistic, sportive and scientific activities may be deducted from the revenues of the year in which they were made. It is important that aid given to CSOs be taken into account in calculating income tax in order to make financially supporting CSOs easier and hence increase the amount of support provided.

The "Value Added Tax Law" stipulates that the commercial, industrial, agricultural and occupational deliveries and services of enterprises or institutions belonging to, or affiliated with, or founded or operated by associations or foundations, or of enterprises based on circulating capital or other enterprises affiliated with these are all subject to value added tax. The 17th article of the "Value Added Tax Law" lists exceptions for cultural, educational and social purposes. The operations and services of socially-motivated foundations, institutions and associations approved by the "Council of Ministers" and of federations registered in accordance with the "Physical Education and Sports Law" for the spreading, improvement and encouragement of science, fine arts and amateur sports, as well as their operations and services regarding cultural and educational activities by way of running or managing theatres, concert halls, libraries, galleries, reading and conference rooms, sports facilities and museums are exempt from value added taxation. All health-related and socially-motivated operations and services provided by the organizations listed above by way of running or operating institutions such as hospitals, dispensaries, clinics, senatoriums, blood and organ banks, x-ray and medical analysis laboratories, and nursing homes, all other operations and services of organizations designated as charities by the "Council of Ministers" that are in line with their founding objectives, as well as the delivery of goods and

provision of services free of charge as mandated by "law" and deliveries and services provided free of charge to organizations listed above are also exempt from value added tax. Allowing such tax exemptions to associations and foundations is positive. It is, however, unclear based on what criteria this list mentioned in the "law" of socially-motivated foundations, institutions and associations approved by the "Council of Ministers" is compiled. Furthermore, although this list creating distinctions among CSOs through the exemptions it provides must be easily accesible to the public, this is not at all the case. It is impossible to monitor the decisions made by the "Council of Ministers" without information on the formation criteria and content of the list in question.

According to the "Municipal Law", dues[79] are collected from notices hung, displayed or distributed in squares, on the streets, in places of entertainment, sales and business open to the public, and in other places where everybody may see, and from advertisements to be made in any form or using any means whatsoever. Yet the 3rd article of the "law" states that no fees may be charged for posters and banners hung by socially-motivated associations in places seen fit by "municipalities". Since it is not clear what the term "socially-motivated" used here actually signifies, it is impossible to monitor whether municipalities exercise their authorities arbitarily. This issue must hence be clarified in the "law".

"Municipalities" collect fees for the permission of entertainment from entertainment venues located within their boundaries. According to the "law", entertainment venues include places such as cinemas, theatres and operas where all kinds of films are screened and plays or shows are performed; hippodromes (racetracks), stadiums, indoor sports halls and similar venues where all kinds of horse races and sports shows are organized; places where concerts, musical events and shows are held; cabarets, bars and night clubs; music halls and restaurants featuring dinner shows or musical events; clubs and music halls operating as clubs; amusement parks and circuses; festival spaces; skating rings; galleries, exhibition spaces and private gyms for which an entry fee is charged; venues for gambling and games of chance as well as video display spaces; dance halls; discotheques; beaches and outdoor and indoor swimming pools, yacht, rowboat and cruise ship tours; places for playing pool, card games such as bridge and bezique, and arcade games; ballrooms and ceremony halls for circumcision ceremonies; spaces that resemble those listed above regardless of the name they operate under, and places that incorporate venues of this sort even if their principal field of business is unrelated. Films screened, concerts held, shows, plays, sports shows, festivals, entertainment events such as balls, fashion shows and riddle-solving games organized by political parties, institutions, clubs, associations, ensembles, unions, societies, schools and similar organizations only once a year and with permission from the "municipality" are exempted from entertainment-related dues. Shows and events that feature artists coming from abroad, however, may not be held exempt. It would be appropriate for the expressions, "only once a year" and "with permission from the municipality" to be removed from among the conditions for being exempted from these dues listed in the "law". Collecting dues from events organized by CSOs with their limited resources negatively affects the continuity of their activities. Besides, it is highly probable that these events listed in the "law" are held by CSOs to generate resources for their work. The possibility of lifting this obligation upon CSOs to pay dues for trying to create their own resources must be taken into consideration in order to support the development of civil society. In the very least, the scope of the exemption allowed for by the "law" must be broadened, and the requirement of being held "only once a year" must therefore be removed.

The "Law on Wills and Inheritance" regulates matters regarding the transfer of the estate[80] of every person whose permanent place of residence is the northern part of Cyprus, and of the immovable properties of those whose permanent place of residence is not the northern part of Cyprus to their inheritors. According to its 55th article, the rules stipulated in this "law" are not applicable to any immovable property endowed upon and maintained as a foundation.

CSOs may, under certain circumstances, be exempted from obligations such as paying taxes, dues, or fees. Significant instances of these exemptions have been listed above. It is, however, almost impossible for

[79] Dues: a tax-like form of revenue gained by authorized bodies in return for giving permission for a certain activity or service.

[80] Estate: the sum of the assets – legal rights, liabilities, movable and immovable properties – of a person at the time of their death.

CSOs to have mastered all of these legal regulations. It must considered for all regulations regarding CSOs to be gathered in one single part of the legislation. In the very least, guidebooks must be prepared explaining these regulations in a manner that is understandable for those who are not lawyers or legal experts. These must be updated regularly and made available to CSOs. If not, CSOs risk having to become professionalized in order to be able to follow their exemptions and obligations, and being unable to carry out their activities due to the heavy bureaucracy in place.

The most detailed and clear regulation with regards to "state" support for the activities of associations is the "Statute for Aiding Fine Arts Associations". Associations that fall under the scope of the Statute are defined as "amateur and semi amateur" associations founded in accordance with the "Law on Associations" "in order to reach a definite and common goal, striving to practice fine arts, and constantly engaging in creativity including the methods and techniques they use to enhance the understanding and appreciation of the society for all areas of fine arts for the advancement of humanity and the Turkish People of Cyprus." What is meant here by 'semi amateur association' is an association that has not been established for commercial purposes, but is able to generate partial income through its artistic activities. The Statute defines 'fine arts' as "artistic creations that give rise to joy and awe in human beings, such as decorative, graphic and plastic arts, as well as music, folk dances, theatre, literature and writing".

Associations wishing to benefit from the aid regulated by this Statute must be registered in accordance with the "Law on Associations" and have fulfilled the requirements stipulated in this "law". All applicant associations must have been operating in line with the rules in their founding statutes for at least two years by the time of application and must display continuity. They must also have proven themselves in their own field, as to be determined through activity reports they present to the Evaluation Commission established as required by the Statute. Associations must apply until the deadline set in the announcement made by the Directorate of Culture, and provide detailed information to the directorate with regards to plans and/or projects for which they are requesting financial support. Associations must also state whether they have requested financial support from any other place for the project and/or plans constituting the subject of the application at hand. Associations must submit their applications by way of application forms they are to obtain from the Directorate of Culture, making sure to include all information required by the Statute and adding substitutive documents when applicable.

Associations may present at most two projects within one calendrical year. The amount of support to be provided to associations must at least be 1% of the total appropriated budget and at most 10%. This support given may also not exceed 80% of the amount requested by an association.

Despite the fact that the "Statute for Aiding Fine Arts Associations" has deficiencies and aspects that must be improved, it is a positive example of public support to CSOs. Even in its current state, the Statute is an exemplary text for similar regulations to be made in different areas. It is important and necessary that the Statute be taken as an example for other public institutions, and that instances of public support with clearly defined procedures and criteria be multiplied.

E. ACCOUNTABILITY

All regulations and practices regarding the monitoring and auditing of CSOs must be based on the principle of minimum state intervention. Both a CSO itself and its members are entitled to the right of privacy. All auditing must rest on clear legal grounds and have legitimate objectives. Audits must not be aggressive or more meticulous than those conducted for private enterprises. Additionally, these audits must not interfere with the internal workings of CSOs.[81]

Any CSO that receives some kind of public support may be obligated to report. In these reports they submit for audit, CSOs must seek to protect the rights of donors, beneficiaries of donations and their employees, and must safeguard legitimately confidential business information. The obligation to report must be consistent with other obligations regarding the rights to life and security of beneficiaries, and must respect privacy.

[81] Guidelines, p.76-77, para. 228

The requirement to respect private life and privacy is not, however, an absolute one, and it should not prevent the investigation of any crime (such as money laundering). Nonetheless, any intervention to be made into one's private life and privacy must be both necessary and proportionate. [82]

The activities of CSOs should be presumed to be lawful in the absence of contrary evidence. CSOs can be required to submit their books, records and activities to inspection by a supervising agency where there has been a failure to comply with reporting requirements or where there are reasonable grounds to suspect that serious breaches of the law have occurred or are imminent. No external intervention in the running of CSOs should take place unless a serious breach of the legal requirements applicable to CSOs has been committed or is reasonably believed to be imminent. It is possible for administrative measures to be taken against CSOs on occasion. In such cases, CSOs should be able to request suspension of any administrative measure taken in respect of them, and refusal of such a request should be subject to judicial challenge. CSOs that do not fulfill the legal requirements applicable to them may be required to rectify their affairs and/or an administrative, civil or criminal penalty may be imposed on them and/or on any individuals directly responsible. Yet penalties should be based on law and observe the principle of proportionality. Foreign CSOs may only be subject to these sanctions in respect of their activities in the host country. The dissolution of a CSO or, in the case of a foreign CSO, the withdrawal of its approval to operate may only be ordered by court decision. Such a court order should only be issued where there is compelling evidence necessitating the dissolution of the CSO and such an order should be subject to prompt appeal. [83]

According to the "Law on Associations" the income of an association or supreme organization consists of membership fees, shares and contributions, aid and donations, revenues obtained through association activities and through association property, support received from public institutions and organizations through banks, and other legal revenues. Associations and supreme organizations may make expenditures in order to establish and operate branches and representative agencies, acquire, maintain and improve movable and immovable properties, pay the wages and other allowances of employees, and – in a general sense – realize and advance their objectives. Associations and supreme organizations collect income with certificates of receipt and make expenses using certificates of expenditure such as invoices, retail vouchers, and self-employment invoices. If association income is collected through a bank, the bank statement or account summary prepared by the bank may act as certificates of receipt. However, according to the "law", each and every one of the receipts to be given in return for aid collected must carry the seal of the "district governorate". The persons to collect the revenues of associations and supreme organizations are determined by the decision of the executive board, and these are given a certificate of authority (or license) to do so. Associations and supreme organizations fundraise and receive aid in accordance with the "Law on Collecting Aid on the Streets and from Door to Door". [84]

The "Law on Associations" obligates associations and supreme organizations to regularly keep certain books and records. These are: their membership lists, including members' identity information, personal records, dates of admission into membership and of leaving membership, and books kept as record of their general assembly decisions and the decisions of each and every board separately, in which each decision is numbered and dated and written in order, and signed by members who have participated in the meeting.

According to the "Law on Associations", internal auditing is essential for associations and supreme organizations. This audit may be conducted by the general assembly, executive or auditing board, or be requested from independent audit firms. The fact that an audit has been conducted by the general assembly, executive board or an independent audit firm does not remove the obligation the auditing board is under. The auditing board monitors based on procedures and principles determined in the statute and at less than a year-long intervals whether or not an association operates in line with the objectives as well as work items to be implemented towards these objectives delineated in its statute, and whether or not books and records are kept

[82] Rec(2007)14 and Explanatory Memorandum, p. 14 and 46, para. 64 and 116.

[83] Rec(2007)14 and Explanatory Memorandum, p. 34, para 67-74.

[84] This issue is treated in detail in the report section titled "Fundraising and Donations".

properly in accordance with legislation in effect and the association statute. The auditing board then presents its findings in a report to the executive board and/or the general assembly when it convenes.

Associations and supreme organizations are under the obligation to submit declarations every year by the end of March, listing their annual activities and balance of income and expenses to the "district governorate" of their district. Foreign associations must submit such activities reports to the "district governorate" once every six months. It would be appropriate for foreign associations to be required to submit annual reports rather than semi-annual ones just like other associations and supreme organizations.

Audits as to whether the activities of associations and supreme organizations are in line with the "law", and whether they keep their books and records in accordance with existing legislation are conducted by inspectors authorized by "district governorates". Specialized personnel may also be requested from the "Ministry in Charge of Financial Affairs" for financial examination. Associations must be notified in writing of audits to be carried out by the "district governorate" at least seven business days in advance. Audits of associations and supreme organizations to be conducted by the "district governorate" are based on the most recent official number of members reported to the "district governorate". It is mandatory according to the article 20/6 of the "Law on Associations" that the administration of an association provide information, documents and records on the association and on the number and nationalities of members, upon request by inspectors in charge during Audits, within the scope of the "law", and allow them entry into managerial offices, enterprises, branches, representative agencies and annexes. Violations of legislation that are found during the audit are reported to the association, and the association is asked to remedy these in 30 days. This obligation to provide all documents requested by inspectors during an Audit and for an association or supreme organization to allow entry into all of its premises must be removed from the "law". The content and procedural rules of audits must be clearly defined by "law", keeping in mind that internal auditing is primary for a CSO. The amendments to be made must be consistent with international standards requiring respect to the privacy of both the CSO and its members.

The 21st article of the "Law on Associations" includes an obligation for every association and supreme organization to inform their members of their activities, income and expenses, members of their executive board, addresses and activities of branches and representative agencies if these exist, and their membership lists. The 19th article of the "law" states that those in the administration of an association are required to provide all kinds of information, document and record to any member upon their request, and grant their wish to enter managerial offices, enterprises, branches, representative agencies and annexes. These regulations are appropriate in terms of the accountability of CSOs.

According to the Guidelines, CSOs must not be obliged to disclose the names and addresses of their members since this would be in conflict with both the right to freedom of association and the right to respect for private life. There are, however, cetain exceptions to this. If, for example, obligations resulting from one's duties or position in an association (such as taking part in governing bodies) necessitate such a thing, their membership may have to be disclosed. Or, if the reception of public support by political parties has been rendered dependant on the number of their members, parties who wish to benefit from such support may be required to declare their membership lists. Certain professional organizations engaging in regulative activities may be expected to declare their membership lists as well. Yet even in such cases, it is necessary to abide by data protection principles imposing restrictions such as limiting the persons who have access to these lists and the details to be declared.[85] The number of the members of a CSO may vary. If there is a minimum number determined for CSOs, falling below this number must not be a reason for the automatic termination of a CSO. Moreover, legal obligations to be informed and keep record of the current number of members must not be used by public authorities in order to access these membership lists or monitor CSOs.[86]

The regulation in article 20/6 of the "law" mandating associations to submit their membership lists to the "district governorate" is not compatible with the international standards mentioned above. According to the article, associations must update their lists with changes regarding their registered members

[85] Guidelines, p.61-62, para. 167

[86] Guidelines, p.62, para. 168

(new admissions, resignations, death, those who leave etc.) and present the numbers of those who left and those who newly joined their association to the "district governorate" in writing within at most 6 months. The membership list is taken by the management of an association in a sealed envelope to the "district governorate", where a cold stamp is applied upon it by the office of the "district governor". It is then returned to the management of the association for preservation, and the management is held responsible in the case of the loss or opening of or any form of damage to this stamped envelope. If any violation of these obligations is found by the "district governorate", the association's administration is immediately removed from duty and three of its members are appointed to gather a general assembly meeting within one month. Directors held responsible for such an event may not run for a post in any of the association's boards or bodies in this first general assembly.

It is problematic that associations are expected to present their membership lists to the "district governorate", even if this is done in a sealed envelope. Moreover, this regulation must be considered in conjunction with other regulations on auditing and monitoring. It should not be forgotten that inspectors are allowed to request membership lists along with any other document and record while conducting audits. These regulations run the risk of jeopardizing the privacy of associations and their members, thus making it difficult to ensure their safety and their right to exercise their freedom of association. Besides, the sanctions to be imposed in the case of a violation of these obligations are quite heavy and of the sort that damages the autonomy of associations. Members have the opportunity of filing lawsuits about conflicts or disagreements they experience with regards to their association, membership or registration. For example, if a member of an association claims that non-members were allowed to vote in the general assembly of their association they may bring an action in court regarding this matter. As may be seen, the path to be followed in the solution of such conflicts is not presenting membership lists to public authorities, but rather filing lawsuits. In the investigation of any crime, or in examples such as the one given above about voting in the general assembly, a merely necessary amount of information should be shared with the court, in line with data protection principles and upon order by a judge. In conclusion, the regulation regarding membership lists must be removed from the "law" as it is in conflict with international standards.

Associations and supreme organizations are obliged to notify the "district governorate" of the full and substitute members chosen to serve on their executive and auditing board, as well as any other bodies that are formed, within 15 days of their general assembly meeting. Any changes to boards and bodies, the statute and the central address of an association or supreme organization must also be reported to the "district governorate". If the central office of an association or supreme organization is relocated, the "district governorate" in concern sends its registry files to the "district governorate" of the district in which the new central office shall be located.

The "district governorate" informs an association or supreme organization of violations and/or deficiencies it finds in terms of the "Law on Associations" in writing, and requests that these be eliminated and/or remedied within 30 days. Associations or supreme organizations that do not remedy deficiencies and/or eliminate violations within this time period are subjected to a set monetary fine. The fines prescribed by "law" are related to articles on general rules for associations, records to be kept by associations and supreme organizations, the acquisition of immovable property, internal auditing, the auditing authority of the administration, the obligation of notification, the reception of aid from abroad with "ministry" permission, the printing of lottery tickets and the organization of raffles. The amount to be fined varies between 1/3rd and 1/10th of monthly minimum wage according to which article has been violated. Such administrative fines must be deposited to the relevant income item of the "State" budget until the end of the month following the imposition of the penalty. Monetary fines imposed by the "district governorate" in accordance with this article are considered public claims, and are collected in line with the rules stipulated by the "Procedure Law on the Collection of Public Claims".

The requirement for foreign associations to provide semi-annual activity reports must be removed from the "law", and all associations must be subject to the same auditing procedure. The discretionary authority bestowed upon inspectors during audits must be limited, and the regulation mandating the submission of membership lists and numbers of members to the "district governorate" must be repealed.

F. RELATIONS BETWEEN PUBLIC INSTITUTIONS AND CIVIL SOCIETY ORGANIZATIONS

In our day, CSOs are an essential component in the functioning of democracy. It is quite important for local, regional and national authorities and international institutions to consult and benefit from the relevant experience and expertise of CSOs when formulating and implementing their policies. CSOs make significant contributions to the formulation of policies by enabling their members and the society to voice their concerns and interests.[87] The participation of CSOs in the provision or decision-making processes of public services is indispensable for democracy. State-CSO cooperation is vital in the planning and provision of public services. Dialogue must be established with CSOs on the objectives of public policy and on decisions to be taken to this end without any discrimination whatsoever, and the effective participation of CSOs on all levels of these processes must be guaranteed. Such CSO participation should ensure the free expression of the diversity of people's opinions within society. CSOs should definitely be consulted during the drafting of legislation or regulative measures by the administration which may affect their statute, financing or spheres of operation.[88]

According to the "Law on the Principles for the Establishment of Ministries", the "Council of Ministers" decides upon the distribution of the staff under the "Director of External Relations" among "ministries". The "Director of External Relations", "Monitors and evaluates associations, unions or public institutions and organizations possessing legal personality operating within the boundaries of the Turkish Republic of Northern Cyprus on matters falling in the Ministry's area of responsibility, and makes recommendations regarding legal amendments or on other issues as it sees fit in line with the statutes, laws and codes of regulations of international unions and associations." The "Director of External Relations" is expected to act in accordance with international standards when carrying out their duties. For instance, CSOs must absolutely be included in an active manner in the process of developing recommendations for legal amendments, which is one of the duties listed among those of the "Director of External Relations".

CSOs may present their opinions not only on legal amendments that directly affect or interest them, but on all legal modifications. According to the 85th article of the "Internal Regulation of the Parliament" drafts and proposals submitted to the "Presidency of the Parliament" are to be published in the "Official Gazette" for the information of the public by the "Presidency of the Parliament" within ten days upon their receipt or within three days if they are urgent. This does not apply, however, to draft resolutions and proposals regarding the renewal or postponement of elections, as well as those that prescribe simple, mostly formal rather than essential changes to "laws" in effect, or include corrections of material errors within them without affecting their essence. It may also be decided by the "Parliamentary General Assembly" upon suggestion by the "Advisory Committee" that drafts and proposals presented to the public at a prior date do not have to be published once more. Drafts that were presented to the public at a prior date but were withdrawn by the "Prime Minister" also do not have be presented once more if they are brought back to the "Parliament" with the same justifications and content. Under these circumstances, opinions provided in the first instance are still valid. This rule also applies to "law proposals". Actual persons and legal entities must submit their opinions regarding drafts and proposals within a maximum of twenty days to the "Presidency of the Parliament". This period is seven days for urgent proposals. The "Presidency of the Parliament" conveys these opinions submitted by actual persons and legal entities regarding drafts and "law proposals" directly to the Commissions responsible for them. This regulation is positive in that it enables CSO participation in law-making processes. It must be considered, however, whether this time limit for the submission of opinions is truly adequate, especially when "fundamental laws" (such as "the Criminal Code") are in question. It is also not enough to merely have CSOs submit their opinions; it must be ensured that these will actually be taken into account. If not, the regulation risks remaining on paper only.

[87] Code of Good Practice for Civil Participation in the Decision-Making Process, CONF/PLE(2009)CODE1, The Conference of International Non-governmental Organisations of the Council of Europe, 01.10.2009, p. 5.

[88] Rec(2007)14 and Explanatory Memorandum, p. 16, para 76-77.

There are many "laws" in the legal framework of the northern part of Cyprus which mandate collaboration with CSOs; yet none of these include concrete matters such as the conditions, content, etc. of this collaboration. Some of these "laws" regulating the cooperation between public institutions and CSOs have been listed below. As shall be seen, many of these "laws" contain ambiguous statements such as "to encourage" or "ensure cooperation". For the participation of CSOs in policy making, public services and decision-making processes to truly be guaranteed, these ambiguous expressions within legal texts must be replaced with concrete regulations that are binding for public institutions and do not leave the participation of CSOs in such processes up to the whims of public authorities and civil servants. Some of the "laws" contain regulations on the inclusion of CSOs in advisory committees and similar bodies formed witin the scope of the "law" in question. The participation of CSOs on these advisory bodies is not, however, fully guaranteed and the administration is allowed great discretionary power on this matter. For the active participation of CSOs on all levels of policy and decision-making processes to be ensured, the legal framework in effect must require the formation of advisory bodies in all of these decision-making processes and must explicitly formulate the rules that shall govern the formation of these bodies, without leaving any room for interpretation.

• The duties and authorities of "mayors" are regulated in the "Municipal Law". According to this "law", "Encouraging the establishment of associations that shall make voluntary contributions to municipal services at the neighbourhood and district level and cooperating with existing ones for the improvement of municipal services" are among the duties of "mayors".

• According to the "Law on the Directorate of Labour" (its Establishment, Duties and Operating Principles), among the duties of the Directorate of Labour are to "Organize and execute the planning, programming and implementation of services in terms of the workforce, full employment, job and vocational training, providing occupational skills to unskilled workers, increasing the size of the skilled workforce, training skilled workers on the job, and the import and export of workforce; determine the needs for facilities, resources, personnel and equipment of domestic and foreign public and private institutions and organizations, as well as professional organizations, union and associations, and when necessary collaborate with these organizations in the implementation of plans and programs."

• According to the "Environmental Law", transparency in decision-making processes that relate to the environment and ensuring the participation of public institutions and organizations, CSOs and the public at large in these processes are among fundamental principles regarding the protection of the environment. Protecting the environment and hence abiding by the rules and measures detailed in this "law" is the duty of all actual persons and legal entities including administrative, management and professional chambers and civil society organizations. The Waste Management Plan is prepared by the "Directorate for the Protection of the Environment" in consultation with "municipalities" and other relevant CSOs, and is presented to the "Council of Ministers" for approval. An Advisory Committee is formed under this "law", out of representatives from public institutions, universities and civil society organizations competent and responsible on issues of the environment and sustainable development, in order to support authorized institutions in charge of the preparation of plans and programs that may have important environmental effect in preparing these plans, conducting strategic environmental assessment, as well as meeting the resulting requirements. Decisions made by this Committee are non-binding. The "Directorate for the Protection of the Environment" supports and guides the public in participating in decision-making processes, accessing the judiciary on environmental issues and acquiring information. It works to enhance environmental consciousness and create awareness in collaboration with other public institutions and organizations and civil society organizations, actively cooperates with the media, prepares curricula and educational programs on the protection of the environment and sustainable development, and encourages universities to conduct scientific research on areas in need of research and to establish faculties or institutes on environmental studies.

• According to the "Law on the Protection, Rehabilitation and Employment of Persons with Disabilities", collaborations are established with regards to persons with disabilities, who have no prospects of employment, with associations, federations and foundations active on the matter.

• In the "Law on the Directorate of Women's Affairs" (its Establishment, Duties and Operating Principles), collaborating with and ensuring coordination among legal entities, unions, associations and other voluntary organizations on issues within its jurisdiction, as well as encouraging, collaborating with, and ensuring coordination among legal entities, associations, union and voluntary organizations that provide services in order to support the resolution of domestic and societal issues faced by women are prescribed as the duties of the "Directorate of Women's Affairs". An Advisory Committee that may issue recommendations in support of the implementation of the duties of the "Directorate of Women's Affairs" is formed in order to enhance the effectivity of activities in accordance with the objectives and principles of the "law", and ensure that all such activities are in unity and may be integrated into a whole. "Representatives of civil society organizations formed in accordance with the "Law of Unions and Associations", whose main objectives and operations are regarding women's issues and of other CSOs active on women's issues alongside their work in other areas" also take part in the membership of this Advisory Committee. Decisions issued by the Advisory Board are advisory in nature, and the Directorate takes these recommendations into consideration when executing the duties it has been given by "law". The Advisory Committee discusses issues of policy, planning, programming and project development in determining the visions, goals and strategies of the "Directorate" in terms of areas part of its duties and authorities, and issues advisory decisions (i.e. recommendations). It prepares reports with its opinions and/or suggestions in terms of the activities and implementation of programs within the scope of the "law". Through these reports it makes recommendations to the "Directorate". It cooperates with the "Directorate" in ensuring productivity and effectivity in its execution of its duties, and contributes in areas where the "Directorate" is in need of expertise.

• The "Law on the Cyprus Turkish Investment Development Agency" (YAGA) stipulates that operating abroad in collaboration with relevant CSOs is among the duties of the Agency.

• According to the "Law on the Directorate of Culture" (its Establishment, Duties and Operating Principles), the "Directorate of Culture" aids and supports the activities of amateur and semi amateur associations established in various fine arts branches.

• According to the "Law on the Directorate of National Archive and Research" (its Establishment, Duties and Operating Principles), "The Directorate is responsible for ensuring communication and harmony between public institutions and organizations, directorates and local authorities, universities, public and private banks, committees that have been formed or are to be formed by the decision of the "Council of Ministers" and civil society organizations with regards to issues that fall under its responsibility, and to take the precautions necessary for these organizations to execute their duties fully and effectively."

• According to the "Law on Zones for the Advancement of Technology", "Executive Company signifies a not-for-profit company established in accordance with this Law and the legislation of the Turkish Republic of Northern Cyprus as the body responsible for the management, monitoring and operating of, as well as investsments to, Zones for the Advancement of Technology." Industrial and commercial chambers, local government, banks, financing institutions, legal entities according to national and international private law, associations and foundations related to research and development and the advancement of technology, as well as relevant public organizations may join an Executive Company either as founding members or later on. Partners of Executive Companies are represented in the Executive Board in respect of the capital contribution they have provided. Productive companies, on the other hand, are organizations established by actual persons or legal entities within Zones for the Advancement of Technology in order to operate in line with the objectives of the "law", that engage in productive activities related to or based on research and development. Incentives in addition to those covered by the "Incentive Law" are applied to the investments to be made for the establishment of the Zone as well as investments to be made by Productive Companies that are to operate in the Zone according to this "law". All revenues to be gained through patents obtained by productive companies belonging to persons and legal entities are exempted from all kinds of taxation for five years. An Executive Company is exempt from all taxes, dues and fees on transactions relating to the implementation of this "law". The revenues gained solely through software and research and development activities within this zone, by companies that are usually liable to pay income and corporate tax are exempt from these

taxes for a five year period. The time periods determined may be extended if seen necessary by the "Council of Ministers".

• According to the "Law on the Directorate of Gender Equality" (its Establishment, Duties and Operating Principles), the "Directorate of Gender Equality" operates on issues related to its area of service, in collaboration with international and domestic organizations. It also follows the activities carried out and decisions taken by public and/or private institutions and organizations, as well as "laws" enacted in areas that fall under its jurisdiction, and provides opinions to relevant authorities when necessary. The "Directorate" carries out its services through its branches. Among the duties of its Economy, Planning and Education Branch are providing support to public and non-public organizations and local governments in terms of information and education for the formulation of policies for gender equality; creating public opinion for the full and equal exercise of rights ensured by "law"; organizing awareness-raising campaigns, workshops, educational seminars, etc. in collaboration with CSOs operating with regards to health, working life, social security, education, politics, culture, and for the end of gender-based discrimination and violence; ensuring the coming together of all organizations active on gender equality, including first and foremost women's studies departments of universities and CSOs focusing on human rights around common projects, as well as the procurement of services from these organizations when necessary, and the follow-up of documents and publications resulting from these studies for the collection of data and the formation of information repositories; gathering statistics and data in areas that fall within the area of responsibility of the "Directorate", initiating necessary operations and following the taking of precautions as a result of such data, cooperating with institutions and organizations for these purposes, and exchanging information. One of the duties of the Branch for the Prevention of Violence and Combating of Discrimination is to collaborate with "municipalities", support actual persons, legal entities and voluntary organizations, and ensure the necessary coordination while operating for the prevention of violence and discrimination. The "law" contains regulations regarding Gender Focal Point Personnel that are to operate in the "Ministry in Charge of Interior Affairs", "Ministry in Charge of Educational Affairs" and "Ministry in Charge of Financial Affairs" in order to ensure the transmission of gender equality practices to local and general plans and programs. The personnel in question operates in areas that fall under the responsibility of "ministries" they are appointed to, and within these they collaborate with CSOs, private and legal persons for the development of plans and projects that ensure gender equality. Centers for Consultation and for the Prevention of Violence created through this "law" in order to prevent violence and monitor the implementation of preventative measures cooperate with CSOs working to end violence against women. According to the "law", CSOs may open Women's Shelters in districts and/or cities. Women's Shelters to be established by CSOs organize matters such as their permission to operate, monitoring, transfer and the annulment of this permission to operate within their statutes. The Council for Gender Equality Consultation and Monitoring is established in order carry the plans and projects developed by CSOs into public policy, and effectively follow and monitor the services provided by the "Directorate". Among council members there must also be representatives of CSOs specializing in gender equality and/or women's rights and/or human rights, that have been active for at least two years and have at least 30 members. CSOs that wish to run for membership in the Council for Consultation and Monitoring must apply with documents proving that they have the qualities required by "law", their report showing two years of experience working for gender equality, and list of expenses with regards to these activities. The General Director and Managers of Branches evaluate whether applicant organizations have the necessary qualities to join the Council or not, and provide written notification to those concerned with regards to the result.

• The Traffic and Transportations Services Commission formed in accordance with the "Law on the Planning, Coordination and Monitoring of Traffic Services" must include the presidents of the two associations for the prevention of traffic accidents with the most members.

• A representative from the CSO with the most members operating on environmental issues participates in the Committee formed in accordance with the "Tourism Development Law". The Committee is in charge of preparing or implementing, or ensuring the implementation of projects in cooperation with CSOs.

• According to the "Consumer Protection Law", a consumer organization is a union, association or foundation established only to protect the rights of consumers, without engaging in any commercial activities or having ties with commercial organizations. For a union or association to be considered a consumer organization in terms of the objectives of this "law", and for it to be able to join the Consumers Council or the Review Board for Goods and Services, it must present a registry document updated annually by the "district governorate" and a document prepared by the "district governorate" indicating that it operates in line with its founding objectives and meets the requirements listed in its statute. If a union or association itself as a legal entity, or any one of the bodies operating under its umbrella founds a commercial company or becomes the partner of one, the said union or association may not serve on the Consumers Council or the Review Board for Goods and Services. A Consumers Council is formed in order to carry out duties such as overcoming the problems consumers are likely to face, meeting their needs, conducting research for the preservation of their health, security and economic interests, following policies made in other developed countries for the benefit of the consumer, preparing recommendations for precautions that may be taken in our country and presenting these to the "ministry", and attempting to ensure the provision of educational programs as well as educational activities for the enhancement of consumer awareness. A representative of each consumer organization takes part in this Council, yet if the number of consumer organizations exceed three, then a total of three representatives they are to determine amongst themselves join the Council. The Review Board for Goods and Services is established in order to resolve conflicts among consumers and vendors resulting from commercial activities. A representative of the consumer organization with the most members may take part in this Board.

• According to the "Law on the Regulation and Prevention of Harm by Tobacco Products", Bayrak Radio and Television Stations as well as private televisions and radios are obliged to run broadcasts that warn, inform and educate the public with regards to the dangers of tobacco for at least ninety minutes every month. These broadcasts are prepared taking the opinions of relevant CSOs into account.

In the organizational "laws" of some professional organizations in the northern part of Cyprus, the relationships between CSOs and the professional organization in question are regulated. It must be determined whether or not these regulations are actually implemented in life, how they are lacking, as well as what the problems and needs experienced in practice are. In this way, it shall become apparent what legal regulations are required for the strengthening of the relationship and collaboration between professional organizations and CSOs, and it shall be possible to take a step towards implementing the necessary amendments.

• In the "Law on the Union of Chambers of Turkish Cypriot Engineers and Architects", "Organizing and improving relations with other professional chambers, unions, civil society organizations and the public" is listed among the duties of both the union and the executive board. Chambers that are members of the Union are obligated to "Collaborate with other professional chambers, unions and civil society organizations in order to realize the goals of the chamber and improve members both socially and economically."

• The "Law on the Union of Turkish Cypriot Tourist Guides" (KITREB) lists among the duties of the Union determining tourism policies and contributing to their implementation through joint operations with CSOs.

• According to the "Law on the Turkish Cypriot Medical Association", the Association may aid other associations, professional organizations or the like in line with its capacity. It may also attempt to join or end up joining the membership of similar international professional organizations. Such Unions and Chambers may collaborate with other professional organizations operating in the same field on issues they see fit. They may also conduct research and development work in terms of issues falling within their areas of interest.

G. ACTIVITIES

The freedom of association as guaranteed by the ECHR is not limited to the establishment of an association or organization. Instead, it includes the continuity

of the organization and its exercise of the freedom of expression in order to operate effectively. The most fundamental obligation of the state with regards to the freedom of association is not interfering with persons who wish to exercise their freedom of association and not intervening into the activities of associations that have already been established.[89] Yet freedom of association must be exercised in line with the principles of democracy and human rights as prescribed by the ECHR, and must not encourage or incite violence in any way. Organizations must be allowed complete autonomy in exercising their freedom of association, and all legal and administrative regulations ensuring the autonomous functioning of organizations must be implemented.[90]

According to the "Law on Associations", the "Ministry in Charge of Interior Affairs" or "district governorate" may request the opening of a lawsuit against an association or supreme organization in the name of protecting national security or public safety, ensuring public order and preventing the commitment of a crime, as well as preserving health, public morals or the rights and liberties of others. The Court may eventually rule to shut down the association or supreme organization in question. For the duration of the court case, the Court may also choose to take all kinds of precautionary measures it sees necessary, including the suspension of the activities of the association or supreme organization on trial. The term "public morals" employed in this regulation is quite ambiguous, and it risks allowing for arbitrary practice since it is unclear what exactly it may come to mean.

There are no restrictions with regards to the activities of associations and supreme organizations in the "Law on Associations". The "law" contains a special regulation on international activities, according to which associations and supreme organizations may operate or enter into collaborations abroad, or establish representative agencies and branches, or join the membership of existing associations and supreme organizations abroad in order to realize the objectives specified in their statutes.

According to the "Criminal Code", those which engage in the activities listed below are considered illegal societies or organizations:

- Any group or organization, irrespective of being a legal entity or not, which has, is alleged to have or is demonstrated to have any connection or relationship whatsoever with a private or legal person or organization that through its establishment, propaganda or using other means advocates for, encourages or incites acts aiming to "Destroy the Constitutional order through rebellion or sabotage; topple the established or formed government of the Turkish Republic of Northern Cyprus, or of any other civilized country through violence or force; damage or harm goods belonging to the Turkish Republic of Northern Cyprus or that are used for commercial and artistic purposes within the Turkish Republic of Northern Cyprus or abroad" or "achieve a general strike or create any form of unrest or spread sedition in the Turkish Republic of Northern Cyprus" is considered an illegal group.

- Any organization, irrespective of being a legal entity or not, whose aim through its establishment, propaganda or by using other means is to achieve one of the seditious[91] intentions listed in the "Criminal Code" or who advocates for or encourages any act that demonstrates this kind of intention is also considered an illegal group. According to the "Criminal Code", the term seditious intention signifies "Aiming to insult the President and affront or degrade the State, or to alter the sovereignty of the State in the Turkish Republic of Northern Cyprus, or incite citizens and residents of the Turkish Republic of Northern Cyprus to attempt to change using illegal means any body or institution established through Law, or belittle and degrade the government of the Turkish Republic of Northern Cyprus and the justice and judicial authority of the State."

- "It also signifies any organization, irrespective of being within the Turkish Republic of Northern Cyprus or abroad and of having legal personality or not, among whose aims are to achieve a general strikeor create any form of unrest or spread sedition in the Turkish Republic of Northern Cyprus, or which has been declared illegal upon decree by the Council of Ministers for being used for these purposes."

89 Harris, O'Boyle, Warbrick, p. 535.

90 Lao People's Democratic Republic, CEDAW, A/60/38 part I (2005) 16, para. 112-113.

91 Seditious: A person or act that makes trouble, sows discord and disunity, or creates disorder.

According to the "Criminal Code", "an illegal organization" also refers to any branch, center or committee of such an organization, or any institute or school it operates. Joining the membership of an illegal organization, serving an illegal organization, advocating for or encouraging any one of the acts listed above and defined as illegal, paying or encouraging the payment of a membership or subscription fee or donation to an illegal organization or to its bank account, possessing publications that are propaganda material belonging to an illegal organization are all criminal offenses.

As may be seen, even aims such as "achieving a general strike" have been considered enough to be deemed an illegal organization. Although outside the scope of this report, it is important to remember that the freedom to unionize and related rights are inextricably linked to the freedom of association. This provision in the "Criminal Code" creates grounds for the declaration of all unions illegal. This also applies to all CSOs active in the field of labour law and worker rights. Furthermore, acts such as donating or encouraging donations to an illegal organization have also been considered criminal offenses in the "law". This regulation places persons under the "obligation to know whether or not any CSO they associate with has been declared illegal or not", and it does so based on a quite broad and ambiguous definition of illegal organization. This kind of obligation shall cause people to shy away from civil society in fear of being charged of a crime. The relevant articles in the "Criminal Code" must be reformulated in accordance with international standards and without any ambiguity whatsoever, so as to not impinge upon the autonomy of CSOs and not portray them as "terrorists" in the eyes of the public.

The freedom of assembly is closely linked to the freedom of association, and comprises an important area of activities for CSOs. In the ECHR the freedoms of assembly and association are regulated in the same article. According to the 11th article of the ECHR, everyone has the right to freedom of peaceful assembly. No restrictions shall be placed on the exercise of this rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. The right of assembly and demonstration is regulated in the 32nd article of the "Constitution". This article states that "Citizens have the right to organize an unarmed and non-violent assembly or public demonstration without obtaining prior permission. This right may be restricted by law only for safeguarding public order." The "Constitution" is not compatible with the ECHR in terms of the subject entitled to this right. The scope of the article in the "Constitution" must therefore be expanded in order to include everyone, irrespective of their being a citizen or not, just like the ECHR.

Along with this need for amendment to the "Constitution", there is also the fact that the fundamental legal text regulating the right of assembly and demonstration, namely the "Law on Assembly and Demonstrations", considerably limits the exercise of the right. The approach apparent in both the "Constitution" and the "law" are clearly in violation of obligations both on a national and international level. In the 4th article of the "Law on Assembly and Demonstrations", it is stated that "Anyone who wishes to organize or hold an assembly or demonstration in a public place must primarily submit a petition on this matter to the district governor." As may be seen, unlike the "Constitution" where only citizens are mentioned, within this "law" every single person is recognized as entitled to this right. However, since the "law" contains regulations limiting the exercise of the right rather than guaranteeing it, the fact that everyone has been covered within its scope actually means that everyone may be limited as such or punished – not that everyone may exercise their right freely. Almost every single provision in this "law" is against the ECHR. For this reason, it must be repealed as soon as possible and a new legal regulation must be put in place that guarantees the freedom of assembly rather than limiting it.

According to the 3rd article of the "law", the "district governor" may issue general or specific decrees regulating the organizing of an assembly or demonstration anywhere within his/her district. He or she may not, however, issue decrees regarding any assembly or march to be held for the sole purpose of religious ceremony in a church or mosque, in accordance with the customs and observances followed by the church or mosque. As per the 4th article, the "district governor" may permit an assembly or demonstration upon being convinced that it runs no risk of negatively affecting public order in accordance with the general or specific directives given by the "Council of Ministers". A permission for a demonstration includes the aim of the demonstration, routes that may be followed and times allowed, and other conditions seen fit by the "district governor". In addition, the name or names of the person

or persons to whom this permission is given is also specified upon the permit.

Every person to whom this kind of permission is given is obligated to fulfill the conditions designated within the permit pursuant to this "law". The "Council of Ministers" may, from time to time, issue general or specific directives to "district governor"s with regards to this authority they exercise. "district governor"s are under the obligation to follow these directives. A "district governor" may cancel, withdraw or change any permission it has given at any time. In cases where the "Council of Ministers" gives such a directive, the "district governor" must cancel, withdraw or change the permission as required. The "district governor" or any authorized officer may halt and order the dispersal of any assembly or demonstration that has not been permitted or has not complied with any one of the conditions designated in the permit it has been given.

According to the 5th article of the "law", the "Council of Ministers" or the "district governor" may ban the organizing of all kinds of assembly or demonstration in places that are not public, during times when they believe this to be necessary for public order or safety, or the organizing of a certain kind of assembly or demonstration in general or on certain dates or for a certain time period or at certain hours or except for under certain specific conditions. While the "Council of Ministers" has jurisdiction over the entire northern part of Cyprus, a "district governor" only has jurisdiction over his or her district. According to the "law", the term "public place" includes any street, market place, alleyway, bridge or any other place of transit used legally by the public, as well as open air spaces, regardless of whether they have been surrounded by any enclosure or not, which the public may enter at the time in question free of charge or upon paying an entry fee. No building may be considered a public place. The "district governor" or any authorized officer may halt and order the dispersal of any assembly or demonstration organized or held in violation of the conditions specified in a decree of this sort.

As may be seen, holding assemblies and demonstrations has been rendered subject to permission from the "district governor". While even introducing a legal obligation for notification is considered a violation of the right to freedom of assembly and demonstration, it is evident that enforcing such a permission requirement may never be compatible with international standards.[92] The requirement for permission must therefore be removed from the "law". The permission prescribed by "law" to be given by the "district governorate" is described as including the aim of the demonstration, routes that may be followed and times allowed, or the aim of the assembly, the place in which and hours during which it may be conducted, and other conditions seen fit by the "district governor". Furthermore, the power to issue decrees bestowed upon "district governor"s and the "Council of Ministers" has allowed not only for the restriction of the scope of this right, but also for completely halting its exercise. According to the ECHR, no restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. The unlimited discretionary power accorded to the "Council of Ministers" and "district governor"s in the "Law on Assembly and Demonstrations" renders the exercise of this right almost impossible. Through this "law", whether an assembly or demonstration may be organized or not is left completely to the initiative of the "Council of Ministers" and "district governors". This unlimited discretionary power must be revoked.

The "law" also regulates that a "district governor" may request any person applying in order to organize an assembly or demonstration to sign a bill payable for an amount s/he sees fit, with or without requirement for a guarantor as to be determined. Yet in cases where the "Council of Ministers" gives a directive for such a bill to signed, the "district governor" in question is obligated to require the applicant to sign it. If it is proven that any one of the conditions designated within the permit has been violated, the "district governor" may order the collection of dues resulting from the bill signed. The person or guarantor who has entered under obligation through this kind of bill must immediately pay the amount owed to the "district governor". If this amount is not paid immediately, then it is considered a monetary fine and is exacted from the applicant or guarantor as per the rules specified in the "Criminal Procedure Code" for the execution of punishments and collection of fines. While even the regulations as to when assemblies and demonstrations are to be considered illegal or those prescribing crimes and punishments with regards to

[92] Ayata ve Karan, p. 128.

violations of the "law" are disputable, in addition to this applicants have been placed under the obligation to sign bills payable. This regulation is a clear violation of the freedom of assembly and international standards on this matter, and must be repealed immediately.

If an assembly consisting of five or more persons or a demonstration consisting of five or more persons or three or more vehicles is organized without permission, or in violation of any one of the conditions designated within the permit it has obtained, or in violation of a decree issued or any one of the conditions specified in this decree, or if its participants disregard or openly refuse an order to disperse, this assembly or demonstration is considered illegal as per the "Criminal Code". In the 71st article of the "Criminal Code" it is stated that those participating in an illegal assembly are considered to have committed a petty crime that is punishable by a maximum of one year in prison. Other than the "Criminal Code", every violation of the "Law on Assembly and Demonstrations" also consists a crime. According to the 8th article of the "law", any one who acts in violation of the "law" is considered to have committed a criminal offense, and in the case of conviction they may be sentenced to a monetary fine or 1 to 3 years in prison or both penalties at once, varying according to the article of the "law" they have violated. These sanctions are quite disproportionate and have deterrent effect on persons who wish to exercise their freedom of association. The sanctions in question must therefore be subjected to extensive amendment.

According to the 7th article of the "law", "law enforcement forces" may arrest without need for an arrest warrant all persons who participate in an illegal assembly or in its organizing, execution and management, disperse an illegal assembly and use force to a necessary and reasonable extent in order to do so. In the "law" the organizing of assemblies and demonstrations has been made subject to prior permission, which is a clear violation of the ECHR. The "law" considers illegal any assembly or demonstration for which the permission requirement is not fulfilled, or where any one of the conditions designated within the permit is not complied with, or any decree issued or the conditions specified in the decree are violated, or an order to disperse is not obeyed. According to this "law", the exercise of the right to assembly is fully in the initiative of the "Council of Ministers" and of "district governors". It is stipulated that everyone must comply with this initiative however arbitrary its decisions may be, and that in the case of failure to comply the assembly shall be deemed illegal and all relevant persons may be arrested by "law enforcement officers" without an arrest warrant, the assembly may be dispersed and the amount of force "necessary and reasonable" may be used during this dispersal. This gives "law enforcement officers" the authority to disperse any assembly and demonstration they deem to be illegal, and arrest relevant persons without warrant. Starting with the requirement for permission itself, there is need for amendment to all regulations that render assemblies and demonstrations illegal. Along with this, discretionary powers and authorities of this sort accorded to "law enforcement" must be withdrawn.

There are certain exceptions listed in the "Law on Assembly and Demonstrations". For instance, none of the rules prescribed in the "law" may be applied to any assembly or march to be held for the sole purpose of religious ceremony in a church or mosque, in accordance with the customs and observances followed by the church or mosque. The "Council of Ministers" may, from time to time, issue a decree to exempt a certain kind of assembly or demonstration or any general or specific group of persons from the application of any one of the rules in this "law" on condition that they abide by the requirements designated in the decree. The "Council of Ministers" may also change or abolish a decree of this sort. When this kind of decree is issued, changed or abolished, this must be published in the "Official Gazette". This kind of authority given to the "Council of Ministers" to privilege certain persons and certain assembly and demonstrations by exempting them from the "law" is completely unacceptable. This regulation must therefore be repealed.

IV.
CONCLUSION AND RECOMMENDATIONS

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A. CONCLUSION

The European Convention on Human Rights, International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights, guaranteeing the freedom of association, have all have been duly signed and have thus become part of the legal framework in the northern part of Cyprus as per the 90th article of the "Constitution". Along with these conventions, there are many legal regulations currently in effect that relate, whether directly or indirectly, to the freedom of association, civil society, and CSOs. While some of these regulations are compatible with international standards, there are still a number of them which are not. The standards to be taken into account in the case of any legal reform with regards to freedom of association must be those that have been highlighted in the conventions mentioned above. Moreover, the active participation of CSOs must be ensured in the process of working towards this kind of reform.

One of the greatest problems of the legal framework currently in effect, which was also what proved the most challenging in conducting this study, is that legal regulations on CSOs are quite far from systematic. Even though the "Law on Associations" that came into effect in May 2016 is the "law" that has come closest to meeting the needs of our day and achieving international standards, it still lacks certain elements and has parts that are in need of amendment. The vague nature and inadequacy of regulations regarding foundations creates serious problems with regards to the freedom of association. "Law on charities" are positive in terms of freedom of association in that they enable different forms of association, yet they are still quite vague, and it does not seem possible for them to be implemented without giving rise to arbitrariness. One of the issues inherent in the entire framework of the legal framework is the lack of unity in terms of how to define a foreigner/alien, and the existence of discriminatory regulations with regards to foreigners. There are a great many "laws" that point to the necessity for cooperation with CSOs, but none of these include details on the content, conditions, etc. of such cooperation. Many of the regulations in question contain ambiguous expressions such as "to encourage" and "ensure cooperation". For the participation of CSOs in policy making, public services and decision-making processes to truly be guaranteed, these ambiguous expressions within legal texts must be replaced with concrete regulations that are binding for public institutions and do not leave the participation of CSOs in such processes up to the whims of public authorities and civil servants. Although there are legal regulations exempting CSOs from obligations such as paying tax, dues, fees, etc. under certain conditions, these are quite scattered and it is almost impossible for CSOs to master them all.

It is not realistic to expect all the problems in the legislation to be solved by way of the new "Law on Associations". Legal regulations must be revised from a wholistic perspective and in line with contemporary and international standards. It must be considered for all regulations regarding CSOs to be gathered in one single place within the legislation. In the very least, guidebooks must be prepared explaining these regulations in a manner that is understandable for those who are not lawyers or legal experts. These must be updated regularly and made available to CSOs. If this is not done, this confusion shall continue posing a serious obstacle in front of the development of civil society and activities of CSOs.

B. RECOMMENDATIONS

Upon a consideration of problems within the legislation with an approach that focuses on the fundamental "laws", our primary recommendations for amendment are as follows:

"The Constitution"

1. The 11th article of the "Constitution" contains general reasons for the restriction of all rights and liberties guaranteed by the "Constitution". As may be deduced from the expression "for reasons such as" employed within the article, the reasons for restriction are left quite open-ended. In addition to this, in almost all articles of the "Constitution" on rights and liberties reasons for restrictions have also been listed separately. It is unclear which reason for restriction shall be applied to which case. The rulings of the "Constitutional Court" are far from displaying the consistency required to resolve this state of uncertainty. For these reasons, it may be said that the administration has been given immense, almost unlimited discretionary power in limiting fundamental rights and liberties. It would be

appropriate to restructure the regime of restrictions regulated in the "Constitution" on fundamental rights and liberties with a liberal perspective and without allowing for arbitrariness, in a manner that meets international standards.

2. Only citizens have been listed as those in possession of the right guaranteed by the 33rd article of the "Constitution. The 33rd article of the "Constitution" is in violation of international human rights standards in that it does not consider non-citizens possessors of the right it regulates. It must therefore be revised accordingly.

3.The 33rd article of the "Constitution" refers only to associations. The scope of the article must be expanded in order to include other forms of association such as foundations, platforms, networks, groups, initiatives, etc. in accordance with the freedom of association, in order to become compatible with the 11th article of the ECHR and relevant case law. It shall be more suitable to use the inclusive term "organization" rather than listing different types of association one by one.

4. The 33rd article of the "Constitution" allows for the suspension of association activities without a judge's decision, and limits the implementation of this kind of suspension to "cases where any delay is considered objectionable". Yet it is unclear what a case where delay is considered objectionable really is, and who is to decide whether this is the kind of case at hand. Furthermore, no time limit has been determined in terms of receiving approval from a judge in interventions where the activities of associations are suspended. "Safeguarding public morals" has also been listed within the article among reasons for shutting down an association. This affords serious discretionary power to judiciary organs. The relativity inherent in the concept of 'morality' allows for arbitrary limitations of the freedom of association. The indefiniteness regarding time limit in the article must be resolved, what is meant by cases where any delay is objectionable must be defined explicitly, and safeguarding public morals must be removed from among reasons for the closure of an association.

5. In the "Constitution", the right to property has been guaranteed for citizens only. This is not compatible with the 1st article of the Additional Protocol No.1 of the ECHR. In the Convention, everyone is considered entitled to the right – every natural or legal person. While the Convention stipulates that the right may only be limited for public interest and in accordance with the principle of legality, the "Constitution" includes other reasons for restriction such as public morals or urban or national planning. The "Constitutional" provision on the right to own property must be rendered consistent with international standards, both in terms of those it deems entitled to the right and in terms of reasons it provides for limitation.

6. The freedom of assembly is closely linked to the freedom of association, and comprises an important area of activities for CSOs. The right of assembly and demonstration is regulated in the 32nd article of the "Constitution", and according to the article those who are in possession of this right are citizens. The "Constitution" is not compatible with the ECHR in terms of the subject entitled to this right. The scope of the article in the "Constitution" must therefore be expanded in order to include everyone, irrespective of their being a citizen or not, just like the ECHR.

"Law on Associations"

1. An amendment to the "Law on Associations" stating that two actual persons or legal entities or groups of these are enough for the establishment of an association shall facilitate the exercise of the freedom of association. This recommendation regarding the required number of founding members is also applicable to sports associations.

2. In the "Law on Associations", children's exercise of the freedom of association is only possible with the written permission of their parents and/or guardians. This approach requiring permission from parents/guardians is not one that is recognized in international law. This requirement for permission must be removed for the advancement of children's freedom of association and the prevention of arbitrary restrictions.

3. There are a series of provisions on residence and work permits in the "law". Foreigners in the northern part of Cyprus are only allowed to establish foundations if they fulfill the conditions specified herein. These restriction of the exercise of the freedom of association with regards to foreigners that are not compatible with international standards must be removed from the "law".

4. Too many elements are required by the "law" to be included in the statutes of associations and supreme organizations. Not only is there no meaningful

purpose in listing details such as the residential addresses and occupations of founding members in an association statute, but this also complicates the exercise of the freedom of association. The elements that must exist within a statute must be limited as much as possible.

5. It is forbidden for associations to use the name, emblem, pin or similar symbol of a political party, union, supreme organization or association that is in existence, or has been dissolved or shut down by court order. This regulation must be revised in terms of dissolved CSOs and supreme organizations. It also does not seem appropriate for a blanket ban to be imposed with regards to those shut down by court order without considering the justifications of the court and the circumstances of the events upon which its decisions are based. It shall be best for the article to be reevaluated in this respect, and for associations and CSOs that have been dissolved to be removed from its scope.

6. The "Law on Associations" is positive in that it allows for different forms of organizing, as well as recognizes and supports different kinds of CSOs that may be established without having to be registered officially; but it has shortcomings. The prospect of making an amendment to the "law" so that not only networks, platforms and initiatives are exempt from the requirement of permission, but that this requirement is also lifted with regards to all other CSOs must be taken into consideration. It would be fitting for a sentence to be added to the "law", specifying that it contains regulations only on associations and supreme organizations that are officially registered. Another shortcoming here is that securities provided to supreme organizations due to their being legal entities are not afforded to platforms, networks or initiatives. This kind of revision to the "law" would be a positive change.

7. The upper limit of 60 days for the evaluation of the association statute is quite long, considering that the "district governorate" will only examine it for violations and/or deficiencies in terms of the "Constitution" and other "laws" – hence carrying out a procedural review more than anything. An upper limit of 30 days appears more reasonable.

8. Gaining legal personality for sports associations and sports clubs must not be made dependant on approval by the "Ministry in Charge of Sports Affairs".

9. In some of the regulations regarding the dissolution, termination and liquidation of associations and supreme organizations there is only mention of associations. If "law-makers" aim for these regulations to apply to supreme organizations as well, then the term 'supreme organizations' must explicitly be included in the relevant sections of the "law". Provisions that aim to apply different rules to associations and supreme organizations must be stated in an explicit manner, so as not to require any interpretation. Otherwise it is not possible for these regulations to be implemented with regards to supreme organizations. Other sections of the "law" contain similarly ambiguous regulations. The entirety of the "law" must be revised taking this issue into account, and necessary amendments must be made in order to prevent the arbitratriness and errors that may result from this ambiguity in practice.

10. During the opening of a branch, a notification of branch establishment signed by at least three individuals to be authorized by the executive board of an association must be submitted to the "district governorate" of the district where the branch shall be opened. This obligation creates the necessity of the existence of at least three association members in the place where the branch shall be located. It would be appropriate for the number of persons required for the establishment of a branch to be lowered to one.

11. It is not at all clear what exactly the expression "notification of branch establishment" used in the "law" signifies. Taking into account the fact that an association's statute is examined by the "district governorate" of the district where the central office of the association is located while the association itself is being established, it is not possible to comprehend why the notification of branch establishment must be checked for consistency with the "law" yet again. In order not to complicate the establishment of branches and render the article compatible with international standards, it must be stated in the "aw" that the examination of the notification of branch establishment is merely procedural. It must therefore be acknowledged that this examination is limited to checking for the existence of a provision in the association statute with regards to establishing branches and for the signatures of persons authorized by the executive board as mentioned in the "law".

12. According to the "law", supreme organizations gain legal personality by way of submitting their notification of establishment to the "district governorate" of their district. They are not subject to examination

the way associations are. It may therefore be assumed that it is adequate for supreme organizations to merely notify the administration while establishing branches, and that these will also not be subject to examination. Yet the "law" is not explicit with regards to this matter, and this gap may give rise to arbitrary practice. A clear statement as to whether the 9th article of the "law" on branches is applicable to supreme organizations or not is therefore necessary. If the article is to apply to supreme organizations as well, the suggestions for amendment made above must also be considered in terms of supreme organizations.

13. The 30-day period allowed to the administration for the examination of violations and/or deficiencies in the notification of branch establishment is quite long, taking into account the matters mentioned above. It would be appropriate for this to be reduced to 15 days.

14. The definition of "foreign association" as delineated by the "law" is acceptable, and so is the fact that different regulations are made with regards to these – as long as these regulations are consistent with international standards. Yet the categories of "foreigners' association" and "foreigners' supreme organization" based solely on the fact that all or part of their founders or members are not citizens must be abolished completely. The enactment of different regulations based solely on citizenship is a violation of the freedom of association.

15. According to the "law", when the composition of an association or supreme organization's membership changes in favour of foreigners, this association or supreme organization becomes subject to the same conditions as foreigners' associations and foreigners' supreme organizations. In the 10th article of the "law" on supreme organizations, however, there is a provision that states that the number of foreigners' associations that may join a federation cannot be equal to or more than half of the total number of member associations. It is evident that these two articles contradict each other. The prohibition in the 10th article must be removed from the "law".

16. The "law" contains different provisions for foreign associations and foreigners' associations in terms of their ability to receive aid and procedures for their auditing when compared to any other association. These regulations that result in more bureaucracy obstruct the exercise of the freedom of association. It shall thus be appropriate for amendments to be made to the "law" so that all associations and supreme organizations are subject to the same provisions.

17. It is quite difficult for foreign associations or supreme organizations to establish representative agencies in order to operate in the northern part of Cyprus. Regulations governing the establishment of branches by other associations and those governing the establishment of representative agencies by foreign associations and supreme organizations are very different from each other. The first problem with regards to these regulations is the imposition of limitations on founding objectives. The second problem that merits attention is the requirement for permission for the establishment of representative agencies. While procedures of this sort with regards to other associations and supreme organizations are conducted by "district governorates", foreign associations and supreme organizations are required to carry out such processes with two "ministries". The third problematic fact is that the criteria to be used by these respective ministries in making their judgment are unclear. Finally, the time period allowed for evaluation prior to the establishment of representative agencies by foreign associations and supreme organizations is 60 days, just like in the establishment and registry of other associations. As may be seen, the designated procedure for the establishment of representative agencies is hard to accomplish, open to arbitrariness and overly bureaucratic. Although it is possible for a requirement for permission to be put in place with regards to foreign associations and supreme organizations, the procedure determined by "law" has rendered the exercise of the freedom of association almost impossible. It would be appropriate for the "law" to be amended so that the limitations in terms of founding objectives are removed, foreign associations and supreme organizations are able to apply to "district governorate"s for permission, and the evaluation required is merely a procedural one to check for consistency with the "Constitution" and other "laws" – just like it should be for the establishment and registry of other associations.

18. There is a notification requirement regarding the aid associations and supreme organizations receive from abroad. Associations and supreme organizations are also obliged to submit annual declarations regarding their income and expenses to the "district governorate" of their district. The notification of all aid coming from abroad in addition to this obligation to provide annual reports is nothing but a bureaucratic burden that must be lifted.

19. Foreigners' associations and foreign associations are under the obligation to obtain permission from the "Ministry in Charge of Interior Affairs" in order to receive monetary aid through banks. Foreigners' associations must obtain permission from the "Ministry in Charge of Interior Affairs" to receive aid in kind as well. In regulations within the article regarding foreigners, the fact of whether or not the aid in question comes from abroad has not been taken into account although this is the title of the article itself; instead, permission from the "ministry" has been required for the reception of all aid. The article includes mention of aid in kind to be received by foreigner's associations, but in the section on foreign associations it only mentions monetary aid to be received through banks. First of all, the text itself must be clarified and rendered more understandable. Parts creating confusion as to which rule shall be applied to what association, as well as uncertainty resulting in differences and arbitrariness in practice must be removed from the "law". Secondly, a CSO that includes foreign elements yet has gained the right to operate in the northern part of Cyprus in accordance with legislation in effect must be able to collect aid following the same procedures as other CSOs. The requirement to obtain permission from the "ministry" must therefore be lifted, and different procedures put in place for foreigners' associations and/or foreign associations must be abolished.

20. It is not appropriate for the rights and properties of associations and supreme organizations shut down by court order to be transferred directly to a budget item seen fit by the "Ministry in Charge of Financial Affairs", without considering the statute or closure reasons of the association or supreme organization in question. If it is the case that all the assets of an association or supreme organization have been acquired as a result of a crime committed – and this is highly unlikely – then such sanctions may come to mind, yet if this is not so, it is better for this intervention into the right to own property, which fully disregards the will of association members and donors, to be removed from the "law".

21. According to the "Law on Associations", the "Ministry in Charge of Interior Affairs" or "district governorate" may request the opening of a lawsuit against an association or supreme organization in the name of protecting national security or public safety, ensuring public order and preventing the commitment of a crime, as well as preserving health, public morals or the rights and liberties of others. The Court may eventually rule to shut down the association or supreme organization in question. For the duration of the court case, the Court may also choose to take all kinds of precautionary measures it sees necessary, including the suspension of the activities of the association or supreme organization on trial. The term "public morals" employed in this regulation is quite ambiguous; it must therefore be removed from the "law".

22. Supreme organizations gain status as legal entities differently from associations, in that they are only required to notify the "district governorate" of their district with regards to their establishment. The "law" does not specify a system with regards to keeping the record of supreme organizations. If such a register is to be kept, regulating this in the "law" shall prevent arbitrary practices.

23. Associations and supreme organizations are under the obligation to submit declarations every year by the end of March, listing their annual activities and balance of income and expenses to the "district governorate" of their district. Foreign associations must submit such activities reports to the "district governorate" once every six months. It would be appropriate for foreign associations to be required to submit annual reports rather than semi-annual ones just like other associations and supreme organizations.

24. The obligation to provide all documents requested by inspectors during an audit and for an association or supreme organization to allow entry into all of its premises must be removed from the "law". The content and procedural rules of audits must be clearly defined by "law", keeping in mind that internal auditing is primary for a CSO. The amendments to be made must be consistent with international standards requiring respect to the privacy of both the CSO and its members.

25. It is problematic that associations are expected to present their membership lists and numbers to the "district governorate", even if this is done in a sealed envelope. Moreover, this regulation must be considered in conjunction with other regulations on auditing and monitoring. It should not be forgotten that inspectors are allowed to request membership lists along with any other document and record while conducting audits. These regulations run the risk of jeopardizing the privacy of associations and their members, thus making it difficult to ensure their safety and their right to exercise their freedom of association. Besides, the sanctions to be imposed in the case of a violation of these obligations are quite heavy and ofthe sort that damages the autonomy of associations. Members have the

opportunity of filing lawsuits about conflicts or disagreements they experience with regards to their association, membership or registration. The regulation regarding membership lists must be removed from the "law".

"Law on Foundations"

1. The "Law on Foundations" mandates that a foundation may be established through endowment by a competent person, for purposes stipulated by "law" and of property that is fit to become a foundation. In the 5th article of the "law" titled "Persons competent to make an endowment" it is stated that, "Any Muslim person with the capacity to enter into contract may endow any property he or she may part with for the purpose of a foundation". The fact that being of a certain religion is listed as a precondition in the "law" is against the freedom of association, and must be amended.

2. There are no regulations regarding foreigners within the "Law on Foundations", which is the fundamental "law" regulating foundations. It is, however, stated that foundations may only be established through endowments by Muslim persons and for purposes consistent with the rules of Islam. Organizations with relations to a certain religion or faith may of course be founded, yet mandating that all foundations be established by persons from a single religious group for purposes consistent with that religion is a clear violation of the freedom of association. Moreover, it is unknown who shall be in charge of interpreting whether the objectives of a foundation are among those forbidden by Islam, and how this interpretation shall be made. It is impossible for these kinds of regulations based on religion rather than "law" to establish standards that may be monitored and be consistent with international standards. It has already become more of an obligation than a simple need for the legislation on foundations to be amended so that it is compatible with international standards in terms of the freedom of association.

3. Although it is more secure for the decision to approve a foundation for registry to belong to a judge rather than any public office, it is clear that simplifying the procedure for the registry of a foundation would reduce the amount of obstacles in front of the establishment of contemporary annexed foundations (which are those handled in this report), and that more foundations in line with the conceptual framework of our day would therefore be able to come into existence.

4. There are no regulations about the establishment of branches for foundations in the "law". This gap in legislation creates serious obstacles in front of foundations in terms of establishing branches. This is an important issue for those referred to as "contemporary foundations" especially. The "law" must therefore guarantee the establishment of branches by foundations.

"Code of Regulations for Foundations" (Annexed -Mülhak- Foundations)

1. The "Code of Regulations" stipulates that the governing body (the trustee or members of the board of trustees) of a contemporary annexed foundation is determined in line with the foundation deed and the "Code of Regulations". A myriad of requirements and conditions have been listed in the "Code of Regulations" for eligibility for trusteeship or membership in a board of trustees. One of said conditions is that a person who wishes to become a trustee or a member of a board of trustees must "have not been convicted of a crime that damages their reputation or any crime that is punishable by more than six months in prison". It is unclear what is meant by "crimes that damage a person's reputation". There are no crimes and punishments regulated under this category in the "Criminal Code". When considered along with the "Criminal Code" it also becomes evident that the requirement to "not have been convicted of any crime that is punishable by more than six months in prison" is quite problematic. For instance, "Any person who has in their possession or carries a sharp knife in a wedding or street fair or brothel or any place which is licensed to sell alcohol is considered to have committed a petty crime, and is punishable by up to two years in prison … as long as it is not deemed appropriate to issue a lighter sentence or other decree, upon taking into consideration all circumstances surrounding the event including the complications specific to the person convicted and other extenuating circumstances, a minimum prison sentence of up to one year may be given." In light of this regulation, a person who commits the crime of "carrying a knife" may not be able to become a trustee or the member of a board of trustees even though the crime in question has nothing to do with the administration of a foundation. Moreover, this requirement of "not having been convicted" brought by the "Code of Regulations" imposes an absolute and indefinite prohibition on people's freedom of association. Another condition listed in the "Code of Regulations" is "being mentally and bodily capable of

the successful administration of a foundation". This is an obstacle for persons with disabilities who wish to become trustees or members of boards of trustees. Yet another one of the conditions set in the "Code of Regulations" is "having good and proper morals in all senses possible" – a requirement with regards to which objective evaluation is impossible and which therefore allows for arbitrariness. As may be seen, almost every single one of the requirements listed in the "Code of Regulations" for eligibility for trusteeship or membership in a board of trustees is of the sort that either obstructs the exercise of the freedom of association or clearly violates the right to this freedom. All of these conditions must be repealed and the "Code of Regulations" must be rendered consistent with international standards.

"Physical Education and Sports Law"

1. The 19th article of the "Physical Education and Sports Law" stipulates that sports clubs shall also be established in accordance with the "Law on Associations". Taking only this article into account, it is possible to assume that the minimum number of founding members listed in the "Law on Associations" is adequate for the establishment of sports clubs as well, just like sports associations. In the 2nd article of the "Physical Education and Sports Law", however, sports clubs have been defined as communities formed by at least twenty people. There is ambiguity regarding the number of founding members required when the 2nd and 19th articles of the "law" are considered in conjunction. It is first and foremost necessary to resolve this ambiguity. Moreover, since the "law" obstructs the exercise of the freedom of association in its current state, it would be more appropriate for the minimum number of founding members required for the establishment of sports clubs to be set as two, and if this cannot be done for it to at least be lowered to the amount considered adequate for other associations – as in, to five founding members.

2. Since more than one federation may not be established in the same sports branch, sports assocations and sports clubs founded to operate in their respective sports branches may only become members of a single federation. The establishment of a new sports federation is in the initiative of the "Ministry in Charge of Sports Affairs". In addition to all of this, the fact that the autonomy of a federation depends on its having five active members makes it seriously difficult for sports federations to operate in an autonomous manner. For this to be ameliorated, the requirement of only two founding organizations in place for other federations according to the "Law on Associations" must be applied to sports federations (in the form of two sports associations or sports clubs) as well.

3. Only actual persons may be founders of sports clubs. This further complicates the exercise of the right. The possibility of making an amendment that renders this "law" compatible with the "Law on Associations" in terms of eligibility for founders must be taken into consideration.

4. For the establishment of a new sports federation the General Board of Directors serving under the authority of the "Ministry in Charge of Sports Affairs" must prepare a founding charter/temporary statute and submit this for the approval of the "Council of Ministers". After the federation is established it must prepare its own actual statute to replace the temporary one and once again request approval from the "Council of Ministers". Even if this whole procedure is complete, the federation may only be autonomous if it has five active sports associations or sports clubs in its membership. As may be seen, both the founding of a new sports federation and the autonomy of such a federation is subject to very tough requirements. These regulations in the "Physical Education and Sports Law" must be removed, and regulations regarding federations in the "Law on Associations" must be made applicable to sports federations as well.

"Law of Charities"

1. In the "Law of Charities" it is stated that the current trustees of any charity that has an educational, literary, scientific or public purpose may request a registry certificate that bestows legal personality upon them. The "law" contains great ambiguity with regards to everything other than the purposes an organization may have in order to be registered as a charity. Since the existence of ambiguous regulations within legislation carries the risk of causing arbitrariness, these regulations on charities must be reviewed and reformulated.

"Armed Forces Internal Service Act and Public Security Officers Law"

1. While there are no explicit regulations regarding the founding of associations in the "Armed Forces Internal

Service Act", members of Security Forces have explicitly been banned from establishing associations according to the "Public Security Officers Law". These "laws" must be rendered compatible with each other, and the blanket ban imposed must be lifted.

2. With respect to the Armed Forces and the Policing Organization, "There is need for extensive amendment in legislation that almost abolishes [their] freedom of association. While certain restrictions can be stipulated for any specific profession in the context of freedom of association, such provisions entirely abolishing this freedom constitute a blatant violation of the freedom of association ... New legislation [to be made] should only impose restrictions that are specifically related to the duties of civil servants. These restrictions should be as limited as possible and should involve no ambiguity."[93] While necessary amendments are being made, all regulations with regards to being the founder or member of a CSO, or taking part in its administration must be treated with this perspective in mind.

3. According to the Armed Forces Internal Service Act, "Members of the Armed Forces may join the membership of associations and sports clubs with written permission from the Command of Armed Forces. They may not, however, work as active members in the associations they join without the added permission of the Command of Armed Forces." The "law" has made both membership itself and working as an active member subject to two separate permission procedures. If this requirement for permission shall be retained, at least a single permission must be considered adequate, and amendments must be made to remove the added requirement for permission for active membership after permission has already been obtained to join the membership of an association.

4. Those covered within the scope of the "Public Security Officers Law" may not join the membership of associations. They may only take part in activities that do not hinder the fulfillment of their duties or injure their professional reputation within permissible sports associations. Those who fall under the scope of this "law" may also not join the membership of politically-motivated associations. It is unclear how expressions such as "politically-motivated association" or "activities that do not injure their professional reputation" shall be interpreted, or what these may come to mean through different interpretations. Restrictions imposed upon the right to freedom of association must rather be based upon clear and explicit criteria that may easily be monitored.

5. While the "Armed Forces Internal Service Act" allows for membership in associations and sports clubs with written permission from the Command of Armed Forces, the "Public Security Officers Law" only allows membership in permissible sports associations, and the "Law on the Establishment of Disciplinary Courts, Disciplinary Misconduct and Punishments, and Trial Procedure" considers active membership in associations and similar organizations or sports clubs that are not on the list approved by the Command of Armed Forces disciplinary misconduct. It is unclear whether members of the Armed Forces may join the membership of associations and sports clubs, only sports associations or associations, similar organizations and sports clubs. The expression "and similar organizations" within the "Law on the Establishment of Disciplinary Courts, Disciplinary Misconduct and Punishments, and Trial Procedure" increases the uncertainty in question, and makes the rules members of the Armed Forces must conform to even more ambiguous. It is necessary that the inconsistencies between these three "laws" be resolved.

"Law on the Establishment of Disciplinary Courts, Disciplinary Misconduct and Punishments, and Trial Procedure"

1. In the "law", "joining the active membership of associations and similar organizations or sports clubs that are not on the list approved by the Command of Armed Forces" is listed as disciplinary misconduct. The expression "active membership" employed in the "law"

[93] Gökçeçiçek Ayata and Ulaş Karan, Sivil Topluma Aktif Katılım: Uluslararası Standartlar, Ulusal Mevzuattaki Engeller, Öneriler (Active Participation in Civil Society: International Standards, Obstacles in National Legislation, Recommendations), TÜSEV (Third Sector Foundation of Turkey) Publications, May 2015, p. 46 (p.44-45 in the English version) http://insanhaklarimerkezi.bilgi.edu.tr/media/uploads/2015/12/16/MevzuatRapor_TUSEV.pdf (English version: http://www.tusev.org.tr/usrfiles/files/Active_Participation_in_Civil_Society.pdf)

is indefinite in terms of scope, and open to interpretation and arbitrariness. Moreover, there is the fact that this list mentioned in the "law" is not open to the public. Due to this lack of transparency, it is impossible to know how the contents of this list have been determined or monitor it in any manner whatsoever. What is meant by active membership must be specified explicitly in the "law". In addition to this, the contents of and criteria according to which the list mentioned in the "law" has been prepared must be clarified.

2. According to the "law", joining the active membership of associations and similar organizations or sports clubs that are not on the list approved by the Command of Armed Forces consists disciplinary misconduct. If disciplinary misconduct is the case, the Disciplinary Court has the power to "Sentence the accused to a maximum of two months of room arrest or open arrest, with bail up to 1500 TL in order to preserve peace and tranquility and ensure good morals". If the case of disciplinary misconduct in question, punishable by the Disciplinary Court, is a "minor" one soldiers may also be punished by disciplinary authorities. Yet it is unclear when misconduct is to be considered "minor" according to the "law". Concrete regulations are necessary on this matter.

3. According to the 79th article of the "law", "A person arrested and convicted from a misconduct that falls under the authority of the Disciplinary Court may not benefit from their wages and other personal rights for the period of their arrest." This regulation is deeply disproportionate and must be repealed immmediately.

"Law on the Policing Organization" (its Establishment, Duties and Authorities)

1. Despite the fact that regulations regarding members of police forces are more flexible and provide greater freedom than those regarding members of the armed forces, members of police forces are also only permitted to establish police associations. With respect to the Armed Forces and the Policing Organization, "There is need for extensive amendment in legislation that almost abolishes [their] freedom of association. While certain restrictions can be stipulated for any specific profession in the context of freedom of association, such provisions entirely abolishing this freedom constitute a blatant violation of the freedom of association ... New legislation [to be made] should only impose restrictions that are specifically related to the duties of civil servants. These restrictions should be as limited as possible and should involve no ambiguity."[94] While necessary amendments are being made, all regulations with regards to being the founder or member of a CSO, or taking part in its administration must be treated with this perspective in mind.

2. The penalty set by "law" of being dismissed from public service (any member of the police forces who is fired from duty is also considered dismissed from public service) due to actions such as establishing or joining the membership of a union, taking part in the administration of an association, etc. is very heavy and disproportionate. Even if these actions are considered to necessitate disciplinary punishment, proportional punishments must be determined.

3. Becoming the chair or member of the board of directors of an association has been listed among actions and behaviours that must be punished by dismissal from public service for civilian service employees within the Policing Organization. This penalty (any member of the police forces who is fired from duty is also considered dismissed from public service) is very heavy and disproportionate. Even if it is believed that such an action requires disciplinary punishment, the punishment determined must be proportionate with the act in question. Furthermore, this regulation also includes taking part in the management of police associations. It is completely incomprehensible and unacceptable for civilian serviceemployees to face dismissal from public service for taking part in the administration of police associations. Even if the regulation in concern is to be retained, police associations must be taken out of its scope.

[94] Gökçeçiçek Ayata and Ulaş Karan, Sivil Topluma Aktif Katılım: Uluslararası Standartlar, Ulusal Mevzuattaki Engeller, Öneriler (Active Participation in Civil Society: International Standards, Obstacles in National Legislation, Recommendations), TÜSEV (Third Sector Foundation of Turkey) Publications, May 2015, p. 46 (p.44-45 in the English version) http://insanhaklarimerkezi.bilgi.edu.tr/media/uploads/2015/12/16/MevzuatRapor_TUSEV.pdf (English version: http://www.tusev.org.tr/usrfiles/files/Active_Participation_in_Civil_Society.pdf)

"Law on the Restriction of the Use of Certain Names and Expressions"

1. The use of the names and expressions listed in the "law" is subject to the permission of the "Council of Ministers". Clearly, the fact that the "law" designates only the "Council of Ministers" as the authority to give such permissions shall increase the level of bureaucracy. It shall also enable the arbitrary use of this power bestowed upon the "Council of Ministers". In other words, this shall make it possible for certain organizations to be allowed use of the names and expressions listed, while others are denied such use. In order to prevent arbitrary practice it is necessary to either completely ban the use of these names and expressions without recourse to permission or allow their use to everyone without need for permission.

2. While associations are explicitly mentioned in the "law", foundations are not. It may be assumed that the expression, "any association, party, group, institution, club, community or any organization" also covers foundations. If this procedure where permission is required prior to use shall be continued, its scope must be delineated with greater clarity. Regulations with uncertain boundaries create the risk of allowing for arbitrariness.

3. Moreover, putting in place legal regulations of this sort, outside the fundamental regulations on associations and foundations – namely, the "Law on Associations" and the "Law on Foundations" – disrupts the systematic nature of legislation regarding the exercise of the freedom of association. The practice of making such regulations through separate "laws" must therefore be abandoned, the ones that exist must be removed, and hence these issues be contained within the fundamental "law" on the matter.

4. The "law" also includes penal sanctions. Those who act in violation of the "law" are considered to have committed a crime. They may be sentenced to pay a fine or up to six months in prison or both penalties at once. The court may also decide upon the payment of a fine for each and every day the crime continues to be committed. If these prohibitions are to be retained in the "law", more proportionate sanctions must be set and the clause involving prison sentence must be removed. It shall also be appropriate for CSOs to be warned regarding the matter prior to the imposition of sanctions, and for them to be given a chance to fix their mistake. Cases where the name chosen by a CSO is not compliant with the "law" and violations of this sort that may easily be righted should not be considered obstacles in front of the establishment of a CSO or reason for its dissolution. CSOs should be warned in an appropriate manner about the violation they are said to have committed and given the adequate chance to set things right.

"Law on Collecting Aid on the Streets and from Door to Door"

1. Associations and supreme organizations carry out their fundraising activities in accordance with the "Law on Collecting Aid on the Streets and from Door to Door". "The Law of Foundations" includes no regulations on collecting aid. It would be more appropriate for the fundraising and donation collection activities of CSOs to be regulated within the fundamental "law" governing each CSO type, such as the "Law on Associations" and the "Law on Foundations", for CSOs to be kept outside the scope of the "Law on Collecting Aid on the Streets and from Door to Door", and for this "law" to instead be implemented with regards to actual persons and legal entities that solicit aid.

2. The fundraising activities of associations and foundations may be monitored through their own declarations. Therefore, it should be reevaluated whether or not a separate auditing mechanism is in fact necessary, and even if it is deemed necessary then methods that violate the freedom of association should be revoked and progressive methods in line with international standards should be identified.

3. The fundraising activities of associations and supreme organizations have been rendered dependant on the obtainment of a permit, and the Office of Regulatory Affairs in charge of providing this permit has been given unlimited discretionary power on the matter. Rules with regards to the collection of aid by associations and supreme organizations must be regulated in the "Law on Associations". If this kind of amendment shall not be made, then the requirement to obtain a permit must be removed from the "Law on Collecting Aid on the Streets and from Door to Door", and a notification must be deemed sufficient. Furthermore, irrespective of whether a permission or notification is required for the collection of aid, the powers of the Office of Regulatory Affairs must be limited. Objective criteria for the decision-making process of the body authorized to deal

with permissions or notifications regarding the collection of aid must be determined, and regulations that are clear, understandable and consistent with international standards must be formulated.

4. Special types of crime have been formulated in the "law", and a prison sentence between 6 months and 1 year has been foreseen in addition to a monetary fine. A prison sentence is a heavy form of punishment for crimes related to the collection of aid. On top of this, the "law" allows for both a prison sentence and a monetary fine to be issued at once. When crimes such as fraud, etc. have already been regulated in the "Criminal Code", it is not appropriate for the "Law on Collecting Aid on the Streets and from Door to Door" to specify special crime types and prescribe prison sentences for these crimes. It would be more fitting for this "law" to exclude regulations regarding crimes, and to instead refer to the "Criminal Code" on these matters. If this shall not be done, then at least crimes related to the collection of aid should no longer be punishable by time in prison.

5. Uniformed members of the Policing Organization may arrest anyone in the process of committing a criminal violation of the "law" without needing a warrant.[95] They may seize the money and goods collected by this person. The "Law on Collecting Aid on the Streets and from Door to Door" provides such authority to uniformed police officers. Considering the collection of aid a crime only due to the absence of a permit – as in, to its having taken place without permission, making arrests in these cases, and seizing the money and goods collected without any prior investigation and without exception is a heavy punishment. The authority to arrest without warrant given to uniformed police officers must be withdrawn.

6. Collecting aid without a valid permit is a criminal offense according to the "law". Considering the collection of aid a crime only due to the absence of a permit, and confiscating or seizing the money and goods collected is both a heavy punishment and a serious intervention into the right to own property. The collection of aid without the obtainment of a permit should thus no longer be defined as a crime.

7. The "Council of Ministers" may exempt any person from the regulations in the "Law on Collecting Aid on the Streets and from Door to Door" by way of an announcement it shall publish in the "Official Gazette", provided that he or she abides by the requirements and conditions it chooses to impose. This discretionary power given to the "Council of Ministers" runs the risk of giving rise to inequality among CSOs and arbitrariness in practice. How the content of the requirements and conditions seen fit by the "Council of Ministers" to exempt a CSO from the provisions mandated by the "law" shall be determined and how their objectivity shall be ensured is completely obscure. Furthermore, the fact that certain CSOs become subject to different conditions by being exempted from the regulations in the "law" creates inequality. For this to be resolved, it would be more appropriate for the collection of aid to be subject to notification only.

"Law of Lotteries"

1. While it is positive that associations and supreme organizations may organize lotteries and raffles in order to generate income, the regulations part of the "Law on Associations" and the "Law of Lotteries" obstruct this to a large extent. Especially the minimum number of members required to be able to organize lotteries or raffles, the fact that these may only be held for association members or those who work in the same workplace or reside in the same building, the rules that must be followed in terms of the tickets to be printed, the fact that not abiding by the rules listed in the "Law of Lotteries" constitutes a crime that is punishable by a prison sentence all render the organization of lotteries and raffles quite difficult. It would be appropriate for regulations to be amended so that the requirement regarding the minimum number of members for a lottery or raffle be removed, notification be considered sufficient instead of asking for permission, and lotteries and raffles be made open to the public rather than only to certain persons.

2. Any violations of the rules prescribes by the "law" are defined as criminal offenses, and those who commit these crimes may be sentenced to prison, to a monetary fine or both penalties at once. Acts in violation of the relevant regulations in the "Law on Associations" are also considered criminal offenses, and the punishment prescribed for these is a monetary fine. Even if criminal punishments are deemed necessary with regards to the regulation on lotteries and raffles, a prison sentence is a

[95] Warrant: a writ sent by judiciary authorities to another authority for the implementation of a judicial order.

very heavy punishment. A proportionate monetary fine must be determined instead.

"Law on Meetings and Demonstrations"

1. Unlike the "Constitution" where only citizens are mentioned, within this "law" every single person is recognized as entitled to this right. However, since the "law" contains regulations limiting the exercise of the right rather than guaranteeing it, the fact that everyone has been covered within its scope actually means that everyone may be limited as such or punished – not that everyone may exercise their right freely. Almost every single provision in this "law" is against the ECHR. For this reason, it must be repealed as soon as possible and a new legal regulation must be put in place that guarantees the freedom of assembly rather than limiting it.

2. Organizing assemblies and demonstrations has been made subject to the permission of the "district governor". This requirement to obtain permission is not consistent with international standards. It must be removed from the "law".

3. The permission prescribed by the "law" to be given by the "district governorate" is described as including the aim of the demonstration, routes that may be followed and times allowed, or the aim of the assembly, the place in which and hours during which it may be conducted, and other conditions seen fit by the "district governor". Furthermore, the power to issue decrees bestowed upon "district governor"s and the "Council of Ministers" has allowed not only for the restriction of the scope of this right, but also for completely halting its exercise. The unlimited discretionary power accorded to the "Council of Ministers" and "district governors" in the "law" renders the exercise of this right almost impossible. Through this "law", whether an assembly or demonstration may be organized or not is left completely to the initiative of the "Council of Ministers" and "district governors". This unlimited discretionary power must be revoked.

4. The obligation to sign bills payable, under which applicants have been placed, is a clear violation of the freedom of assembly and international standards on this matter, and must be repealed immediately.

5. In the 71st article of the "Criminal Code" it is stated that those participating in an illegal assembly are considered to have committed a petty crime that is punishable by a maximum of one year in prison. Every violation of the "Law on Assembly and Demonstrations" also consists a crime. Any perpetrator of such a violation may be sentenced to a monetary fine or 1 to 3 years in prison or both penalties at once in the case of conviction. These sanctions are quite disproportionate and have deterrent effect on persons who wish to exercise their freedom of association. The sanctions in question must therefore be subjected to extensive amendment.

6. According to the "law", "law enforcement forces" may arrest without need for an arrest warrant all persons who participate in an illegal assembly or in its organizing, execution and management, disperse an illegal assembly and use force to a necessary and reasonable extent in order to do so. Starting with the requirement for permission itself, there is need for amendment to all regulations that render assemblies and demonstrations illegal. Along with this, discretionary powers and authorities of this sort accorded to "law enforcement" must be withdrawn.

7. The "Council of Ministers" may, from time to time, issue a decree to exempt a certain kind of assembly or demonstration or any general or specific group of persons from the application of any one of the rules in this "law" on condition that they abide by the requirements designated in the decree. The "Council of Ministers" may also change or abolish a decree of this sort. This kind of authority given to the "Council of Ministers" to privilege certain persons and certain assembly and demonstrations by exempting them from the "law" is completely unacceptable. This regulation must therefore be repealed.

"Corporate Taxation Law"

1. In the 14th article of the "law" it is stated that in determining the income generated as commercial gain, aid and donations given against receipt to charitable institutions such as associations, foundations, etc. for purposes (educational, cultural, charitable, etc.) approved by the "Parliament" may also be discounted from the total revenue. Donations and aid may be deducted from the total income generated in the year they were given, yet donation and aid that exceed 5% of taxable income may not be deducted as such.

A change in policy to allow for the deduction from taxable income of all donation and aid, and to therefore encourage the supporting of CSOs, would be a positive step in facilitating the strengthening of civil society.

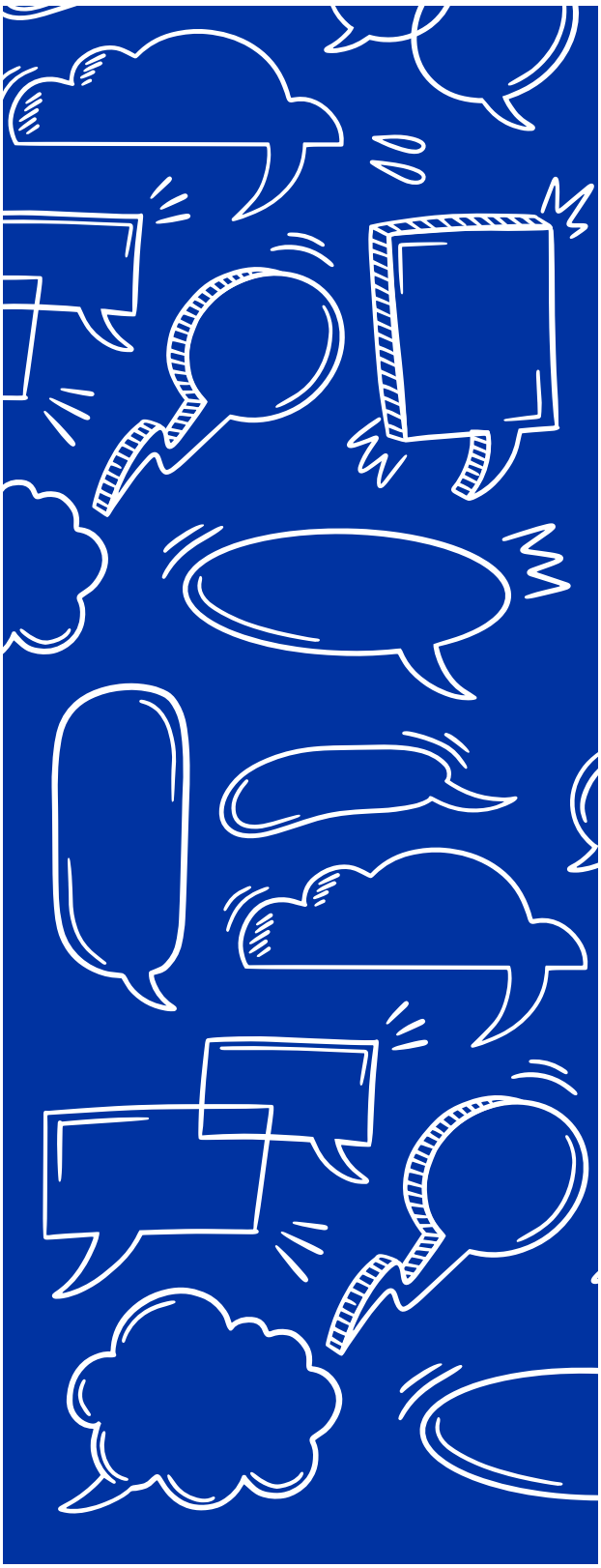
"Value Added Tax Law"

1. Allowing such tax exemptions to associations and foundations is positive. It is, however, unclear based on what criteria the list mentioned in the "law" of socially-motivated foundations, institutions and associations approved by the "Council of Ministers" is compiled. Furthermore, although this list creating distinctions among CSOs through the exemptions it provides must be easily accesible to the public, this is not at all the case. It is impossible to monitor the decisions made by the "Council of Ministers" without information on the formation criteria and content of the list in question. The "law" must regulate criteria for the creation of this list as well as methods for its sharing with the public.

"Municipal Law"

1. According to the "law" dues are collected from notices hung, displayed or distributed in squares, on the streets, in places of entertainment, sales and business open to the public, and in other places where everybody may see, and from advertisements to be made in any form or using any means whatsoever. Yet the 3rd article of the "law" states that no fees may be charged for posters and banners hung by socially-motivated associations in places seen fit by "municipalities". Since it is not clear what the term "socially-motivated" used here actually signifies, it is impossible to monitor whether municipalities exercise their authorities arbitarily. This issue must hence be clarified in the "law".

2. It would be appropriate for the expressions, "only once a year" and "with permission from the municipality" to be removed from among the conditions for being exempted from entertainment permit fees. In the very least, the scope of the exemption allowed for by the "law" must be broadened, and the requirement of being held "only once a year" must therefore be removed.



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APPENDIX: List of Legislation

The following pieces of legislation have been taken into consideration in preparing this report.

- The "Constitution"
- "Military Service Law"
- "Law on the Principles for the Establishment of Ministries"
- "Press Law"
- "Law on the (Establishment, Duties and Operating Principles of the) Prime Ministry"
- "Law on the Prime Ministry Supervisory Board (its Establishment, Duties and Authorities)"
- "Law on the Restriction of the Use of Certain Names and Expressions"
- "Physical Education and Sports Law"
- "Municipal Law"
- "Law on the Special Fund for the Beşparmak Mountains Fire"
- "Right to Information Act"
- "Criminal Code"
- "Criminal Procedure Code"
- "Law on the Directorate of Labour" (its Establishment, Duties and Operating Principles)
- "Environmental Law"
- "Permanent Residence Law"
- "Law on Associations"
- "Law on the Establishment of Disciplinary Courts, Disciplinary Misconduct and Punishments, and Trial Procedure"
- "Law on the Protection, Rehabilitation and Employment of Persons with Disabilities"
- "Code of Regulations for the Directorate of Foundations" (Designation of Fees) (Amendment)
- "Code of Regulations for Foundations" (Annexed -Mülhak- Foundations)
- "Law on Foundations"
- "Income Tax Law"
- "Statute for Aiding Fine Arts Associations"
- "Public Security Officers Law"
- "Armed Forces Internal Service Act"
- "Law of Charities"
- "Law on the Directorate of Women's Affairs" (its Establishment, Duties and Operating Principles)
- "Civil Servants Law"
- "Law on the Establishment and Broadcasts of Public and Private Radio and Television Channels"
- "Value Added Tax Law"
- "Rule Prohibiting the Sale of Real Estate Property to Persons not part of the Turkish Cypriot Community" (For the Duration of the State of Emergency, Rule Preventing the Sale of Real Estate Property to Persons not part of the Turkish Cypriot Community)
- "Law on the Union of Chambers of Turkish Cypriot Engineers and Architects"
- "Law on the Union of Turkish Cypriot Tourist Guides"
- "Law on the Turkish Cypriot Medical Association"
- "Law on the Cyprus Turkish Investment Development Agency (YAGA)"
- "Law on the Protection of Personal Data"
- "Corporate Taxation Law"
- "Law on the Flag of the Turkish Republic of Northern Cyprus"

- "Law on the Directorate of Culture" (its Establishment, Duties and Operating Principles)
- "Law on the Declaration of Assets"
- "Law on the Establishment, Duties and Operating Principles of the Board of Finance, Inspection and Review"
- "Law on the Directorate of National Archive and Research" (its Establishment, Duties and Operating Principles)
- "Law on the Educational and Medical Activities of Missionaries" (Regulations regarding Foreigners)
- "State of Emergency Law"
- "Law of Lotteries"
- "Law on the Policing Organization" (its Establishment, Duties and Authorities)
- "Law of Unions"
- "Law on Political Parties"
- "Law on Collecting Aid on the Streets and from Door to Door"
- "Law on the Acquisition and Long-term Renting of Property" (for foreigners)
- "Law on Zones for the Advancement of Technology"
- "Law on Assembly and Demonstrations"
- "Law on the Directorate of Gender Equality" (its Establishment, Duties and Operating Principles)
- "Law on the Planning, Coordination and Monitoring of Traffic Services"
- "Tourism Development Law"
- "Consumer Protection Law"
- "Turkish Community Council Law on Unions and Associations"
- "Law for the Regulation and Prevention of Harm by Tobacco Products"
- "Law on Legal Entities" (the Registry of Immovable Property)
- "Law on the Establishment, Duties and Operating Principles of the Organization of Foundations and Office of Religious Affairs"
- "Law on Wills and Inheritance"
- "Law on Taxation Procedure"
- "Law on Foreigners and Immigration"
- "Interpretation Law"
- "Citizenship Law"

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